# PROPOSED STATEWIDE POLICY ON COMPLIANCE SCHEDULES IN NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

## Draft Staff Report

## December 4, 2007

**Photo of the Sacramento Regional Wastewater Treatment Plant and surrounding Bufferlands, courtesy of Sacramento Regional County Sanitation District.**


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| | |
|---|---|
| Basin Plan | Regional Water Quality Control Plan |
| Cal. Code Regs. | California Code of Regulations |
| California Ocean Plan | Ocean Plan |
| Cal. Wat. Code | California Water Code |
| CEQA | California Environmental Quality Act |
| C.F.R. | Code of Federal Regulations |
| CTR | California Toxics Rule |
| CWA | Clean Water Act |
| MS4s | Municipal Separate Storm Sewer Systems |
| NPDES | National Pollutant Discharge Elimination System |
| NTR | National Toxics Rule |
| OAL | Office of Administrative Law |
| POTWs | Publicly Owned Treatment Works |
| Regional Water Board | Regional Water Quality Control Board |
| SIP | Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California |
| State Water Board | State Water Resources Control Board |
| Tit. | Title |
| TMDL | Total Maximum Daily Load |
| TSO | Time Schedule Order |
| U.S.C. | United States Code |
| USEPA | United States Environmental Protection Agency |
| USFS | United States Forest Service |
| Water Boards | State and Regional Water Boards |
| WDRs | Waste Discharge Requirements |
| WQBELs | Water Quality-Based Effluent Limitations |

# 1. INTRODUCTION

## *Purpose of this Staff Report*

This staff report serves as the substitute environmental document for the proposed policy (see Appendix A) that would establish statewide uniformity in authorizing compliance schedules and provide consistency in the implementation of these provisions in the state's National Pollutant Discharge Elimination System (NPDES) permit program.

The State Water Resources Control Board (State Water Board) is subject to the California Environmental Quality Act (CEQA) when adopting state policy for water quality control, but has been certified[1] by the Secretary of the California Resources Agency as exempt from the requirements of preparing an Environmental Impact Report, Negative Declaration, or an Initial Study, if certain conditions are met[2]. This document fulfills the requirements of CEQA for preparation of a substitute environmental document by including a description of the proposed policy, the need for the policy, an analysis of reasonable alternatives to lessen or mitigate potentially significant environmental impacts of the policy, and the identification of the environmental impacts of the reasonably foreseeable methods of compliance. The environmental impacts that could occur as a result of the proposed actions are discussed in "Environmental Considerations" (Chapter 7) and summarized in the "Environmental Checklist Form" (Appendix D).

## *Need for the Proposed Policy*

Both federal[3] and state water law recognize compliance schedules[4] as a discretionary regulatory tool for bringing dischargers into compliance with new, revised, or newly interpreted water quality standards, without being in violation of their permits. The purpose of a compliance schedule is to give an existing discharger time to make necessary changes in the facilities or operations in order to comply with a new, or more stringent, water quality-based permit limitation without subjecting them to enforcement proceedings. A compliance schedule is included in the discharger's permit and lays out an enforceable sequence of actions or operations to be taken by the discharger in order to comply with permit limitations as rapidly as possible. The essential effect of including a compliance schedule in a permit is to allow a discharger a specific period of time, that is as short as possible and that includes appropriate interim limits, to achieve compliance with an effluent limit that is established to implement a water quality standard. By including the compliance schedule in the permit, the effective date of the effluent limit is postponed; however, in no circumstances would a compliance schedule

[1] See Cal. Code Regs., Title (Tit.) 14, §15251(g).
[2] See Cal. Code Regs., Tit. 23, §3720 *et seq.*
[3] See 40 Code of Federal Regulations (C.F.R.) §§122.47 &131.38.
[4] The Clean Water Act (CWA) at §502(17) defines a compliance schedule as "a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard."

authorize an increase in pollutant discharges above existing levels because of state and federal antidegradation and antibacksliding requirements.

Compliance schedules may be included in NPDES permits only if there is explicit authorization in the state's water quality standards or implementing regulations[5]. In the absence of such explicit authorization, compliance schedules can be specified only in enforcement orders [i.e., "Time Schedule Orders" (TSOs)]. The issuance of an enforcement order may engender a negative perception of the discharger, which may be unwarranted based on the circumstances. An enforcement order furthermore does not stay NPDES permit requirements, making the discharger vulnerable to citizen lawsuits[6] and, under certain circumstances, mandatory minimum penalties.[7]

The State Water Board has adopted specific compliance schedule provisions for California Toxics Rule (CTR) criteria for toxic pollutants, which are contained in the statewide "*Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*" (SIP). In addition, six of the nine Regional Water Quality Control Boards (Regional Water Boards) have individually adopted compliance schedule authorizations for NPDES permits into their water quality control plans (Basin Plans) that vary in their coverage, authorized length, and other provisions.

At a meeting on October 25, 2006 to consider compliance schedule authorizations for the San Diego Region, the State Water Board identified a need for statewide uniform compliance schedule provisions and consistency in implementation of these provisions in the state's NPDES permit program. The State Water Board directed staff to develop a statewide policy that would meet this need. The purpose of the policy is to make better use of both stakeholder and State and Regional Water Board (collectively Water Boards) resources by providing clear guidance on the appropriate use of compliance schedules in NPDES permits. This proposed policy is not intended to limit the Water Boards' discretion to take any enforcement action authorized by law for violations of the terms and conditions of NPDES permit requirements, including compliance schedules. Nor is the proposed policy intended to limit the ability of citizens to bring enforcement action if a discharger is not in compliance with NPDES permit requirements.

On October 31, 2007, USEPA released the "California Permit Review Report on Compliance Schedules" (Report), as required to fulfill the terms of a settlement agreement, dated June 7, 2007, between USEPA, Baykeeper, Humboldt Baykeeper, Ecological Rights Foundation, and Communities for a Better Environment. The Report contains a USEPA review of twelve, randomly selected, permits with compliance schedules issued by the San Francisco Bay, Los Angeles, and Central Valley Regional Boards. As stipulated by the settlement, USEPA evaluated in the Report whether the

[5] See the 1990 Star-Kist Caribe administrative decision issued by the United States Environmental Protection Agency (USEPA) Administrator (In the Matter of Star-Kist Caribe, Inc., NPDES APPEAL No. 88-5).
[6] See CWA §505.
[7] See California Water Code (Cal. Wat. Code) §13385.

compliance schedules in the permits met five specific requirements of the CWA and implementing regulations.

USEPA concluded in the Report that the permits reviewed did not adequately document the need for and duration of the compliance schedules granted to the dischargers. USEPA further found that some of the permits appeared to lack an enforceable sequence of actions leading to compliance with the final WQBEL or a final effluent limitation, and that some permits inappropriately included time to develop Total Maximum Daily Loads (TMDLs), site-specific objectives (SSOs), or use attainability analysis (UAAs).

USEPA stated in the letter transmitting the Report to the Water Boards, that, based on the conclusions in the Report, it recommends that California NPDES permits with compliance schedules be strengthened by including explanations as to why compliance schedules are appropriate and how they provide for achieving compliance with the permit's final effluent limitations as soon as possible, as required by USEPA regulations at 40 CFR §122.47. USEPA also recognizes in the letter that the State Water Board has already directed staff to draft a uniform statewide policy on compliance schedules in NPDES permits that addresses these shortfalls. USEPA further stated that it supports this effort.

## 2. REGULATORY BACKGROUND

### *Federal and State Water Law*

In 1972, Congress enacted the federal CWA to restore and maintain the chemical, physical, and biological integrity of the Nation's waters[8]. Under §303(c) of the CWA, the states are primarily responsible for the adoption and periodic review of water quality standards for all waters within their boundaries. Water quality standards consist of designated uses for state waters, water quality criteria (objectives in California) to protect those uses, and an antidegradation policy[9]. The State Water Board is designated as the state water pollution control agency for all purposes under the CWA. The state Porter-Cologne Water Quality Control Act[10] of 1969 authorizes the State Water Board to adopt statewide water quality control plans and requires each of the nine Regional Water Boards to adopt Basin Plans that provide the basis for protecting water quality in each Region.

Both statewide plans and regional Basin Plans are subject to triennial review, which may lead to periodic updates[11]. Triennial reviews are comprehensive and include a public hearing to identify issues to be addressed. The State or Regional Water Board

[8] See 33 United States Code (U.S.C.) §1251 *et seq.*
[9] See 33 U.S.C. §1313(c); 40 C.F.R. §131.6.
[10] See Wat. Code §13000 *et seq.*
[11] See CWA §303 ( c)(1).

evaluates all available information at the hearing to determine whether revisions to the plans are needed and the nature of any necessary revisions.

Amendments to a statewide plan or Basin Plan are initiated by the appropriate Regional Water Board, and follow state and federal requirements for public participation and for environmental and economic consideration. Amendments adopted by a Regional Water Board must be approved by the State Water Board. Regulatory provisions of amendments must further be approved by the State Office of Administrative Law (OAL). Amendments to surface water quality standards must also be approved by USEPA in order to be effective.

In addition, the State Water Board is responsible for adopting statewide policies for water quality control, which all nine Regional Water Boards must conform to. The Regional Water Boards are primarily responsible for implementing statewide water quality control plans and polices, and their individual Basin Plans. Water quality standards contained in these plans are translated into effluent limitations written into NPDES permits and waste discharge requirements (WDR)[12].

### *The NPDES Permit Program*

The federal NPDES permit program was created to regulate point source discharges of pollutants to navigable surface waters of the United States. The CWA and implementing federal regulations require that NPDES permits contain effluent limitations[13] reflecting the pollution reduction that is achievable through technology (known as "technology-based effluent limitations")[14]. NPDES permits must also include effluent limitations as stringent as necessary to ensure that receiving waters meet water quality standards [known as "water quality-based effluent limitations" (WQBELs)][15]. NPDES permits may also include enforceable limits that must be met in the affected receiving waters (known as "receiving water limitations") and other provisions necessary to assure attainment of water quality standards.

The state Porter-Cologne Water Quality Control Act authorizes the Water Boards to regulate discharges through the issuance of WDRs, waivers of WDRs, or prohibitions. Both point and nonpoint source discharges are regulated under state law. Regulation is not limited to discharges to navigable surface waters, but includes discharges to land

[12] See Wat. Code §13263.

[13] Effluent limitation means, "any restriction established by a state or the (USEPA) Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance." (See 33 U.S.C. §1362(11.)

[14] Technology-based limits are based on secondary treatment or its equivalent for publicly-owned treatment works or prescribed technology levels for industry. (See 33 U.S.C. §1311(b).)

[15] See 33 U.S.C. §1311(b)(1)(C). Water quality-based effluent limits are required when technology-based effluent limits fail to attain or maintain acceptable water quality (as measured by water quality standards).

and groundwater. California is one of the states authorized to issue NPDES permits in lieu of direct regulation by USEPA. Chapter 5.5, Division 7 of the California Water Code provides the statutory authority for the Water Boards to implement the NPDES permit program. WDRs issued pursuant to Chapter 5.5 (known as "NPDES permits") implement the applicable federal NPDES regulations and serve in lieu of federally issued NPDES permits.

All NPDES permits issued by Regional Water Boards include self-monitoring programs which require the permittee to collect pertinent water quality data and to submit it to the Regional Water Board for evaluation of compliance with the terms of the permit. In addition, Regional Water Board staff conducts periodic inspections of each permitted discharge to monitor permit compliance. The CWA limits the length of NPDES permits to five years. Therefore, NPDES permits in California are usually renewed (and expire) on a five-year schedule. If the permittee submits a timely renewal application, the respective facility may continue to operate under its existing permit until a new permit is issued, even after the permit's expiration date[16]. Consideration of the terms and conditions of NPDES permit requirements, including any proposed compliance schedules, must occur at a public hearing. The public is able to comment not only on the propriety of granting a compliance schedule, but also on the interim limits, the duration of the compliance period, and whether the discharger made the appropriate showing that the compliance schedule was as short as practicable taking into account the relevant factors.

### *Compliance Schedules as a Regulatory Tool*

Both federal and state law recognize compliance schedules as a discretionary regulatory tool for bringing dischargers into compliance with new, newly revised, or newly interpreted water quality standards. Compliance schedules are presently authorized statewide by the Cal. Wat. Code § 13263(c) for WDRs that do not implement federal NPDES regulations[17]. The CWA also recognizes that compliance schedules are an appropriate tool to be used by permitting agencies[18]. The CWA defines a compliance schedule as "a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard."[19]

The purpose of a compliance schedule is to give an existing discharger time to make necessary changes in facilities or operations in order to comply with a new, or more stringent, water quality-based permit limitation without subjecting the discharger to enforcement proceedings. In certain situations, it may be reasonable to consider including a time schedule in the discharger's permit and lay out an enforceable sequence of actions or operations to be taken by the discharger in order to comply with permit limitations as rapidly as possible. For example, a discharger may not be able to

[16] See 40 Code of Federal Regulation (C.F.R.) §122.6; Cal. Code Regs., tit. 23, §2235.4.
[17] See Cal. Code Regs., Tit. 23, §2231.
[18] See 33 U.S.C. §1313(e)(3)(F).
[19] See 33 U.S.C. §1362(17).

immediately meet a newly adopted water quality objective that has resulted in more stringent permit limitations, but may need time to design, build, and put into operation additional wastewater treatment facilities in order to achieve compliance.

Authorization for compliance schedules in NPDES requirements can be provided in a number of ways, including: 1) by incorporating general compliance schedule authorization language in statewide plans or regional Basin Plans, 2) by incorporating compliance deadlines as part of a specific water quality standards action, and 3) by incorporating compliance dates in the implementation sections of Total Maximum Daily Load (TMDL) implementation plans. In the absence of such explicit authorization, compliance schedules can only be specified in enforcement orders.

### *Legal Restrictions on the Use of Compliance Schedules in NPDES Permits*

Under §303(e) of the CWA, compliance schedules may be included in NPDES permits only for water quality-based limitations (effluent and/or receiving water limitations), not for technology-based effluent limitations. Technology-based limitations cannot be relaxed and must be met immediately[20]. Technology-based effluent limitations apply to all point sources and represent the degree of control that can be achieved by point sources using various levels of pollution control technology that are defined by USEPA for various categories of discharges and implemented on a nationwide basis. USEPA is responsible for developing regulations implementing CWA requirements for technology-based effluent limitations which specify the maximum allowable levels of pollutants that may be discharged by facilities within an industrial category or subcategory and the schedule for implementation. The compliance dates for meeting existing technology-based effluent limitations set by USEPA have long since passed. Water quality-based effluent limitations are required when technology-based effluent limitations are not sufficient to ensure that water quality standards will be attained and maintained in the receiving waters.

In general, NPDES permits must comply with all requirements in CWA §301[21]. An exception to this rule is for some storm water permits. While industrial storm water permits must comply with all requirements in CWA §301[22], storm water permits for municipal separate storm sewer systems (MS4s) are not required to comply with CWA §301. In California, MS4s are required to comply with water quality standards, but through an iterative approach[23].

USEPA's regulations[24] additionally specify that the first NPDES permit issued to a new discharger may contain a compliance schedule only under very limited circumstances – when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years

[20] See 33 U.S.C. §1311(b).
[21] See 33 U.S.C. §1342(a).
[22] *Id.* §1342(p)(3)(A).
[23] See *Building Industry Association v State Water Board* (2004) 124 Cal. App. 4th 866.
[24] Pursuant to 40 C.F.R. §122.47.

before discharging waste. Federal regulation defines a "new discharger" as any discharger that began discharging after August 13, 1979 and never had an NPDES permit. Under these provisions, a discharger currently operating under non-NPDES WDRs, who under new interpretation of the law is newly required to comply with NPDES permitting requirements, is considered a "new discharger".[25] Dischargers that are not "new dischargers" are considered "existing dischargers". An "existing discharger" includes an increasing discharger (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge).

The 1990 *Star-Kist Caribe* decision[26] further established limits on the use of compliance schedules in water quality-based NPDES requirements through its interpretation of CWA §301(b)(1)(C). This section of the CWA provides that, by July 1, 1977, NPDES permits must include effluent limitations as stringent as necessary to ensure immediate compliance with water quality standards. The *Star-Kist Caribe* decision provides that immediate compliance must be achieved for any applicable state water quality standards that were adopted before July 1, 1977 and that have not been substantively revised after that date. Accordingly, water quality-based effluent limitations and receiving water limitations that implement water quality standards adopted before July 1, 1977 would be ineligible for compliance schedules in NPDES permits. The *Star-Kist Caribe* decision also addressed water quality standards adopted or revised after July 1, 1977. A compliance schedule may be included in NPDES permits for state water quality standards adopted or revised after July 1, 1977, only if the state has specifically authorized the establishment of compliance schedules in the state water quality standards, or in its regulations that implement the standards.

USEPA has also stated that water quality standards that were adopted prior to July 1, 1977 can reasonably be treated in the same manner as new or revised standards adopted after July 1, 1977, if the state has adopted a new interpretation of the pre-July 1, 1977 standard[27]. If, for example, a narrative objective is for the first time interpreted as requiring a numerical limit for a specific pollutant, compliance schedules may be appropriate. However, a mere re-adoption of a pre-July 1, 1977 standard without any substantive revisions would not qualify as a new or revised standard[28].

As previously stated, the term of a NPDES permit in California is five years. However, the CWA and federal regulations do not limit the duration of an otherwise permissible compliance schedule to the five-year term[29]. Rather, the CWA simply requires that water quality standards be met as soon as possible. If a permitting authority (i.e., Water

[25] As stated in USEPA's letter dated November 29, 2006 partially approving the amendment to the Water Quality Control Plan for the North Coast Region authorizing compliance schedules under Resolution R1-2004-0011.
[26] See *In the Matter of Star-Kist Caribe*, *Inc*., NPDES APPEAL No. 88-5.
[27] 1994 Whole Effluent Toxicity Policy (EPA-833-B-94-002).
[28] See *In the Matter of Star-Kist Caribe*, *Inc*., NPDES APPEAL No. 88-5.
[29] See USEPA approval of the North Coast Region's compliance schedule provisions dated November 29, 2006.

Board) wants to authorize a compliance schedule that exceeds the normal five-year permit term, and it is possible that the permit will continue in effect after it has expired, the Water Board will need to ensure that all interim and final milestones in the compliance schedule are enforceable. USEPA has stated[30] that inclusion of the entire compliance schedule as an enforceable provision of the NPDES permit (including all interim requirements and the final effluent limitation) will ensure that the permittee must meet all compliance schedule milestones and that the permit is consistent with the definition of a compliance schedule in the CWA and federal regulations[31].

***Compliance Schedules to Implement TMDLs***

As mentioned earlier in this staff report, state authorization for compliance schedules in NPDES permits can be provided in several ways, including as compliance dates incorporated in the implementation chapters of the Basin Plan, for example in TMDL implementation plans.

Section 303(d) of the CWA requires each state to identify the waters within its boundaries that do not meet applicable water quality standards and develop a plan (known as a TMDL) to control the identified pollution such that standards are met. A numeric target for the problem pollutant must be specified for the impaired water body, which when met should ensure attainment of water quality standards. The numeric target accounts for seasonal variation and includes a margin of safety to account for uncertainty and lack of knowledge. Each TMDL allocates the total allowable load of the problem pollutant to the affected receiving water among the various sources of the pollutant, including point and nonpoint source discharges, based on calculations on how much of the pollutant the water body can receive without being in violation of standards. Allocations assigned to point sources are known as “waste load allocations.”

In California, TMDLs typically are incorporated into Basin Plans through the Basin Plan amendment process. A TMDL Basin Plan amendment must include an implementation plan for achieving reductions of pollutant mass, which commonly specifies a compliance schedule for achieving the assigned allocations. Interim allocations may also be specified.

Strategies to attain water quality standards, such as TMDLs, do not change the fact that enforcement of the CWA against point source dischargers is primarily through their NPDES permits. A TMDL’s numeric target is not directly enforceable against dischargers absent a corresponding permit provision. Nonetheless, a TMDL may be achieved, in part, by establishing and enforcing water quality-based limitations in NPDES requirements that are consistent with the assumptions and requirements of the TMDL waste load allocations. Note that federal regulations do <u>not</u> require that TMDL-based effluent limitations for a discharger be set equal to the allotted waste load

[30] See USEPA approval of the North Coast Region’s compliance schedule provisions dated November 29, 2006.
[31] See CWA §122.44(d)(1) 2.

allocations, but do require that NPDES permits be issued consistent with the assumptions and conditions of any TMDL in effect for the receiving water.

Not all TMDLs in California are incorporated into Basin Plans. Some TMDLs are adopted as single permitting actions. This is possible where a single discharger is responsible for the impairment or where a single order by the Regional Water Board can address the impairment. Because the TMDL can both be established and implemented through a single action, the Regional Water Board has the authority to issue a permit and enforcement action without first adopting the TMDL into the Basin Plan[32]. Implementing a TMDL through a single permitting action saves considerable Water Board resources and allows the TMDL to be implemented sooner. However, while a TMDL adopted as a single permitting action may not require a Basin Plan amendment, it may still need an implementation schedule longer than what is authorized (if authorized) in the Basin Plan due to the sometimes complex approaches needed to meet waste load allocations and ensure that water quality standards are no longer impaired. Two Regional Water Boards (the North Coast and the Los Angeles Regional Water Boards) have adopted authorization for extended compliance schedules for TMDLs established through a single permitting action.

As stated earlier, the CWA and federal regulations do not limit the duration of an otherwise permissible compliance schedule to the five-year term, but simply require that water quality standards be met as soon as possible. Note that compliance schedules to attain water quality-based NPDES limitations based on TMDLs must also meet all other CWA compliance schedule requirements.

***Statewide Provisions Authorizing Compliance Schedules in NPDES Permits***

USEPA promulgated new criteria for toxic pollutants through the National Toxics Rule (NTR) in 1992, which was amended in 1995[33]. On May 18, 2000, USEPA promulgated criteria for priority toxic pollutants specifically for California under the California Toxics Rule (CTR)[34] . The rule includes provisions authorizing compliance schedules of up to five years in NPDES permits held by existing dischargers.

On March 2, 2000, the State Water Board adopted the "*Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*" (SIP) that includes implementation provisions for priority pollutant criteria promulgated through the NTR and CTR criteria and for priority pollutant objectives established by Regional Water Boards in their Basin Plans[35]. The SIP includes specific

[32] However, all TMDLs must be incorporated either directly or by reference into a water quality control plan (i.e., Basin Plan) as required by CWA §303(d)(2). This incorporation can be done as a change without regulatory effect.
[33] See 40 C.F.R. §131.36.
[34] See 40 C.F.R. §131.38.
[35] If a water quality objective and a CTR criterion are in effect for the same priority pollutant, the more stringent of the two applies.

language authorizing the inclusion of compliance schedules in NPDES permits for effluent limitations established to achieve compliance with the promulgated criteria for CTR priority pollutants. The SIP implementation provisions for the CTR criteria were approved by USEPA on May 18, 2000, the same day as USEPA finalized the CTR. The SIP compliance schedule provisions can be found in Appendix B, in the back of this document.

The SIP restricts compliance schedules to existing dischargers. The compliance schedule must contain a final compliance date based on the shortest practicable time required to achieve compliance. When a compliance schedule exceeds one year, the schedule must include a series of required interim actions with deadlines that reflects a realistic assessment of the shortest practicable time required to perform each task. If the final compliance date needs to extend beyond the permit term, the final compliance date and supporting explanation must be included in the permit findings.

Under the SIP, a discharger applying for a compliance schedule must submit documentation to the Water Boards that diligent efforts have been made to quantify and control pollutant sources and discharges and that immediate compliance is not feasible. The discharger must also submit a proposed schedule for additional source control measures, pollutant minimization actions, facility upgrades, etc., and demonstrate that the proposed schedule to achieve compliance is as short as practicable.

Specifically, the SIP allows a Water Board to grant a discharger up to five years maximum from the date of a NPDES permit issuance, re-issuance, or modification to comply with effluent limitations based on CTR criteria. Effluent limitations that are based on waste load allocations allotted through a TMDL are also eligible for compliance schedules under this provision. These SIP-authorized compliance schedules expire on May 18, 2010, ten years after the SIP's effective date.

The SIP further specifies that in no case shall a compliance schedule exceed twenty years to develop and adopt a TMDL and establish and comply with waste load allocations derived from a TMDL for a CTR criterion.[36] However, this specific SIP provision was disapproved by USEPA on October 23, 2006. USEPA stated that one reason this provision was disapproved was that developing and adopting a TMDL does not constitute a remedial action by a permittee to achieve compliance, but is rather a state process and responsibility[37] and, therefore, not an appropriate application of compliance schedules. USEPA further found that it is not appropriate to defer the establishment of a WQBEL until a TMDL has been developed. Finally, USEPA noted in its letter disapproving this provision that compliance schedules must provide for achievement of water quality-based effluent limitations as soon as possible[38]. USEPA found it inappropriate to base the length of a compliance schedule on the time needed

[36] That is, a compliance time schedule could allow up to 15 years to complete the TMDL and up to five years to comply with the TMDL-derived effluent limitation.
[37] See 33 U.S.C. §1313(d).
[38] USEPA cited 40 C.F.R. §122.47(a)(1).

to develop and adopt a TMDL, rather than on the time needed for achieving compliance with applicable effluent limitations.

The SIP compliance schedule provisions are summarized in Table 1, below, and compared to Region-specific provisions authorizing compliance schedules (discussed below).

### *Region-Specific Provisions in Basin Plans Authorizing Compliance Schedules in NPDES Permits*

In 1990, USEPA held in the *Star-Kist Caribe* decision that compliance schedules can be included in NPDES permits only if the states' water quality standards or implementing regulations contain explicit authorization. Since 1990, five of the nine Regional Water Boards have successfully amended their Basin Plans to authorize incorporation of compliance schedules in NPDES permit requirements. Basin Plan amendments that authorize compliance schedules in NPDES permits must be approved by the State Water Board, OAL, and USEPA before becoming effective. The Regions with effective general compliance schedule provisions in Basin Plans are listed below in order of effective date:

| **Region:** | **Effective Date:** |
|---|---|
| Central Valley (Region 5): | September 25, 1995 |
| San Francisco Bay (Region 2): | November 13, 1995 |
| Santa Ana (Region 8): | July 15, 2002 |
| Los Angeles (Region 4) | February 18, 2004 |
| North Coast (Region 1) | February 27, 2006 |

In addition, the San Diego Water Board (Region 9) adopted compliance schedule authorization provisions on November 9, 2005, which the State Water Board and OAL have approved. However, USEPA has yet to approve this Basin Plan amendment. The Lahontan Water Board (Region 6) adopted a compliance schedule Basin Plan amendment on April 12, 2006 that was later withdrawn from State Water Board consideration. The Central Coast Water Board (Region 3) and the Colorado River Basin Water Board (Region 7) have not adopted compliance schedule authorization provisions. Regional Water Board resolutions and language authorizing compliance schedules for their respective Regions are found in Appendix C in the back of this document. Table 1, below, summarizes the various adopted regional compliance schedule provisions and compares them to the SIP.

All of the existing Basin Plan compliance schedule provisions state that compliance schedules must be as short as possible/practicable/feasible, which is in compliance with CWA regulations requiring that water quality standards be met as soon as possible. Four of the five approved Region-specific compliance schedule provisions allow up to a maximum of ten years for compliance with non-TMDL derived NPDES effluent limitations. For example, the San Francisco Bay, Central Valley, and Santa Ana Regions' provisions all state that compliance must be achieved as soon as

**Table 1. Comparison of Statewide and Regional Compliance Schedule Authorization Provisions**.

| Compliance Schedule Provision | State Water Board Action | USEPA Approval | Maximum Length of Compliance Schedule | Applicability | Circumstances |
|---|---|---|---|---|---|
| **Statewide Plans:** | | | | | |
| **SIP** | | | | | |
| (a) 5-years | Adopted 3/2/2000 | Yes | As short as practicable, up to 5 years from permit issuance, re-issuance, or modification, but not to exceed 5/18/2010. | Applies only to CTR-based effluent limitations. | Discharger must demonstrate infeasible to obtain immediate compliance with effluent limitations; show that the schedule is as short as practicable; document current and proposed source control/pollutant minimization efforts, etc. |
| (b) 15-years | Adopted 3/2/2000 | Dis-approved on 10/23/06 | As short as practicable, up to 15 years from 5/18/2000, or until 5/18/2015, to develop and adopt a TMDL & establish waste load allocations derived from TMDL and up to 5 years to comply w/ TMDL-derived effluent limitations, not to exceed 5/18/2020. | Applies only to discharges to waters impaired for a CTR pollutant. | Discharger must demonstrate infeasibility, that the discharger has made appropriate commitments to support and expedite TMDL development; show that the schedule is as short as practicable; document current and proposed source control/pollutant minimization efforts, etc. |

| Compliance Schedule Provision | State Water Board Action | USEPA Approval | Maximum Length of Compliance Schedule | Applicability | Circumstances |
|---|---|---|---|---|---|
| **Region 1 – North Coast** | | | | | |
| a) Standard | Approval | Yes | Shortest feasible time, up to 5 years from permit issuance, re-issuance or modification with an additional up-to-5-year extension, but not to exceed 10 years from permit issuance, re-issuance or modification. | Applies to effluent or receiving water limitations that implement new, revised, or newly interpreted objectives, criteria, or prohibitions after 2/27/2006. | Discharger must demonstrate infeasibility, document current and proposed source control efforts, show that the schedule is as short as technically and economically feasible, etc. |
| (b) New Permittees | Approval | No, dis-approved | Shortest feasible time, up to 5 years from date of permit issuance, with an up-to-5-years extension, but not to exceed 10 years from the permit's effective date. | Applies to existing non-NPDES dischargers that, under a new interpretation of law, are newly required to comply with new NPDES permit requirements. Includes any newly imposed effluent or receiving water limits necessary to implement objectives, criteria, or prohibitions adopted, revised, or reinterpreted after 7/1/1977, and that were not included in the non-NPDES permit. | As for the standard provision, above. Demonstrate, with supporting data and analysis of technical or economic infeasibility to achieve immediate compliance with new NPDES permitting requirements. |
| (c) TMDL-derived limits | Approval | Yes | Shortest feasible time period, but may extend beyond 10 years from date of permit issuance. | Applies to TMDL-derived effluent or receiving water limitations that implement new, revised, or newly interpreted water quality objectives, criteria, or prohibitions adopted as a single permitting action. | As for the standard provision, above. |

| Compliance Schedule Provision | State Water Board Action | USEPA Approval | Maximum Length of Compliance Schedule | Applicability | Circumstances |
|---|---|---|---|---|---|
| **Region 2 – San Francisco Bay** | | | | | |
| Standard | Approval | Yes | As soon as possible, but not to exceed 10 years after new objectives or standards take effect. | Applies to effluent limitations that implement new objectives or standards after 11/13/1995. | See SIP. |
| **Region 4 – Los Angeles** | | | | | |
| Standard | Approval | Yes | (1) shortest possible time, not to exceed 5 years from the date of permit issuance, re-issuance or modification, and no later than 10 years after the adoption, revision, or interpretation of an applicable standard, whichever time is shorter; (2) as short as possible, but may exceed 5 years for a TMDL adopted as a single permitting action. | (1) applies to effluent limitations implementing new, revised, or newly interpreted water quality standards after 2/18/2004; "newly interpreted standard" defined to mean a narrative standard that is interpreted to require numeric effluent limitations that are more stringent than limits in prior permit; (2) TMDL –derived limitations that implement new, revised, or newly interpreted standards after 2/18/2004 that are adopted as a single permitting action. | Similar to SIP. |
| **Region 5 – Central Valley** | | | | | |
| Standard | Approval | Yes | Shortest practicable time, not to exceed 10 years from the date of adoption of objectives or criteria. | Applies to effluent limitations implementing criteria or objectives adopted after 9/25/1995. | Infeasibility to achieve immediate compliance. |

| | | | | | |
|---|---|---|---|---|---|
| **Region 6 – Lahontan** | | | | | |
| Standard | Not applicable, withdrawn | | Shortest practicable time. | Applies to objectives, criteria, or effluent limitations based on the objectives or criteria; applies to NPDES storm water permits where an iterative approach is necessary to develop strategies and controls to meet water quality standards. | Infeasibility. |
| **Region 8 – Santa Ana** | | | | | |
| Standard | Approval | Yes | Shortest practicable time, not to exceed 10 years after the adoption of new, revised or newly interpreted objectives. | Applies to new, revised, or newly interpreted objectives after 7/15/2002. | Similar to SIP. |
| **Region 9 – San Diego** | | | | | |
| Standard | Approval | | Shortest practicable time, not to exceed 5 years from issuance, re-issuance or modification of permit; one additional extension of up to 5 years allowed; in no case, can schedule exceed 10 years from the adoption, revision, or interpretation of objective. | Applies to effluent or receiving water limits implementing new, revised, or newly interpreted objectives after 11/9/2005, and to limits that result from new knowledge about the discharge's characteristics and impacts for any pollutant for which an objective was adopted, revised, or newly interpreted after 7/1/1977. | Similar to SIP. |

possible, but not to exceed ten years after adoption of new objectives or criteria. The Santa Ana Region's provisions further allow compliance schedules for revised or newly interpreted objectives or criteria. The North Coast Region's provision is slightly different in that compliance must be achieved no later than ten years from inclusion of the compliance schedule into the NPDES permit. The Los Angeles Region's compliance schedule provisions are most like the SIP provisions (and the provisions of the proposed policy in Appendix A) by specifying that the length of a compliance schedule shall be the shortest possible time, not to exceed five years from the date of permit issuance, re-issuance or modification, and no later than ten years after the adoption, revision, or interpretation of an applicable standard, whichever time is shorter.

Additionally, both the Los Angeles and the North Coast Regions have provisions in their Basin Plans authorizing extended compliance schedules to meet effluent or receiving water limitations derived from TMDLs that are adopted through a single permitting action. Allowing extended compliance schedules for TMDLs that are adopted through a single permitting action is consistent with allowing extended compliance schedules for TMDLs that are adopted as Basin Plan amendments.

Some of the Regions with compliance schedule authorization provisions have detailed descriptions in their Basin Plans regarding the implementation of compliance schedules. For example, the San Diego Region's adopted compliance schedule provisions specify the type of documentation that must be submitted by a discharger applying for a compliance schedule: "*To document the need for and justify the duration of any such compliance time schedule, a discharger must submit the following information, at a minimum: (1) the results of a diligent effort to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream; (2) Identification of the sources of the pollutant in the waste stream, documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established, and a proposed schedule for additional source control measures or waste treatment needed to meet the WQBELs and/or receiving water limitations; (3) evidence that the discharge quality is the highest that can reasonably be achieved until final compliance is attained; and (4) a demonstration that the proposed schedule is as short as practicable, taking into account economic, technical and other relevant factors. The need for additional information and analyses will be determined by the Regional Board on a case-by-case basis. The need for and justification of the duration of any such compliance time schedule will be subject to Regional Board review and approval."*

Other Regions do not have this level of specificity in their adopted compliance schedule provisions.

***Use of Compliance Schedules in Water Board-issued Enforcement Orders***

In the absence of explicit authorization in the state's Basin Plans, compliance schedules can only be issued by the Water Boards in enforcement orders (i.e., TSOs) when an existing discharger cannot achieve immediate compliance with effluent or receiving

water limitations in NPDES permit requirements. These enforcement orders have compliance schedules which provide interim timelines and actions (including findings that the schedule is as short as possible to achieve compliance). The enforcement orders are based on a finding that the discharger is in violation of NPDES requirements. The issuance of an enforcement order with a compliance schedule does not stay NPDES permit requirements and does not bar third-party citizen suits for such violations, pursuant to CWA §505. Mandatory minimum penalties may also be imposed under state law under certain circumstances.

## 3. PROJECT DESCRIPTION

This project is a state water quality control policy ("Statewide Policy on Compliance Schedules in NPDES Permits") that would establish uniform, statewide compliance schedule authorization provisions, authorize compliance schedules in NPDES permits for those Regions currently without authorization, and provide for consistent implementation of these provisions in the state's NPDES permit program.

The project is found in its entirety in Appendix A of this staff report.

The State Water Board's goals for this project are to:

1. Provide statewide uniformity in authorizing compliance schedules in NPDES permits;
2. Provide statewide consistency in the implementation of these provisions;
3. Provide a basis for equitable regulation;
4. Utilize stakeholder and Water Board resources better by providing clear guidance on the appropriate use of compliance schedules in NPDES permits.

## 4. ENVIRONMENTAL SETTING

California encompasses a vast variety of environmental conditions ranging from the snow-covered peaks of the Sierra Nevada Mountains to the hot dry desert of Death Valley, with almost unlimited climatic variations and precipitation patterns between these two extremes. The Pacific Ocean shoreline presents the western boundary, while the eastern boundary consists of mountain ranges bordering basin and range topography. Between the western coastal ranges and the eastern mountains are troughs and valleys aligned in a general north-south direction.

The state is divided into nine separate hydrologic regions for water quality management purposes[39]. Brief descriptions of the regions and the water bodies affected by the proposed policy are presented below. The information provided in this section was extracted from the Basin Plans.

[39] Pursuant to Cal. Wat. Code, §13200(a).

### *North Coast Region (Region 1)*

The North Coast Region comprises all regional basins, including Lower Klamath Lake and Lost River Basins, draining into the Pacific Ocean from the California-Oregon state line southern boundary and includes the watershed of the Estero de San Antonio and Stemple Creek in Marin and Sonoma Counties (Figure 1). Two natural drainage basins, the Klamath River Basin and the North Coastal Basin, divide the Region. The Region covers all of Del Norte, Humboldt, Trinity, and Mendocino Counties, major portions of Siskiyou and Sonoma Counties, and small portions of Glenn, Lake, and Marin Counties. It encompasses a total area of approximately 19,390 square miles, including 340 miles of coastline and remote wilderness areas, as well as urbanized and agricultural areas.

Beginning at the Smith River in northern Del Norte County and heading south to the Estero de San Antonio in northern Marin County, the Region encompasses a large number of major river estuaries. Other North Coast streams and rivers with significant estuaries include the Klamath River, Redwood Creek, Little River, Mad River, Eel River, Noyo River, Navarro River, Elk Creek, Gualala River, Russian River, and Salmon Creek (this creek mouth also forms a lagoon). Northern Humboldt County coastal lagoons include Big Lagoon and Stone Lagoon. The two largest enclosed bays in the North Coast Region are Humboldt Bay and Arcata Bay (both in Humboldt County). Another enclosed bay, Bodega Bay, is located in Sonoma County near the southern border of the Region.

Distinct temperature zones characterize the North Coast Region. Along the coast, the climate is moderate and foggy with limited temperature variation. Inland, however, seasonal temperature ranges in excess of $100^0$F (Fahrenheit) have been recorded. Precipitation is greater than for any other part of California, and damaging floods are a fairly frequent hazard. Ample precipitation in combination with the mild climate found over most of the North Coast Region has provided a wealth of fish, wildlife, and scenic resources. The mountainous nature of the Region, with its dense coniferous forests interspersed with grassy or chaparral covered slopes, provides shelter and food for deer, elk, bear, mountain lion, fur bearers, and many upland bird and mammal species. The numerous streams and rivers of the Region contain anadromous fish, and the reservoirs, although few in number, support both cold water and warm water fish.

Tidelands and marshes are extremely important to many species of waterfowl and shore birds, both for feeding and nesting. Cultivated land and pasturelands also provide supplemental food for many birds, including small pheasant populations. Tideland areas along the north coast provide important habitat for marine invertebrates and nursery areas for forage fish, game fish, and crustaceans. Offshore coastal rocks are used by many species of seabirds as nesting areas.

Major components of the economy are tourism and recreation, logging and timber milling, aggregate mining, commercial and sport fisheries, sheep, beef and dairy production, and vineyards and wineries. The largest urban centers are Eureka in Humboldt County and Santa Rosa in Sonoma County.

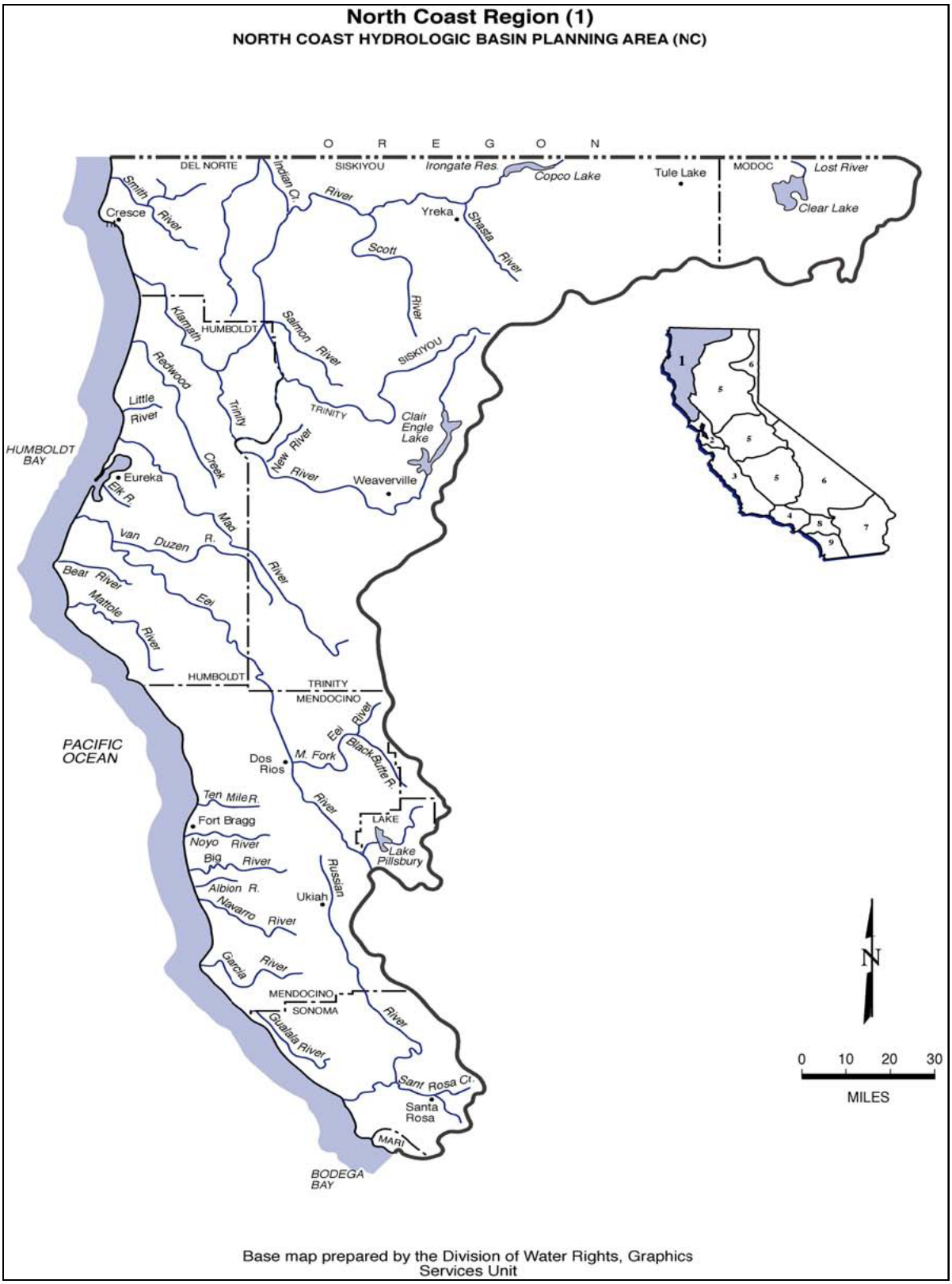


**Figure 1: North Coast Region Hydrologic Basin**

### *San Francisco Bay Region (Region 2)*

The San Francisco Bay Region comprises San Francisco Bay, Suisun Bay beginning at the Sacramento River, and San Joaquin River westerly, from a line which passes between Collinsville and Montezuma Island (Figure 2). The Region's boundary follows the borders common to Sacramento and Solano Counties and Sacramento and Contra Costa Counties west of the Markely Canyon watershed in Contra Costa County. All basins west of the boundary, described above, and all basins draining into the Pacific Ocean between the southern boundary of the North Coast Region and the southern boundary of the watershed of Pescadero Creek in San Mateo and Santa Cruz Counties are included in the Region.

The Region comprises most of the San Francisco Estuary to the mouth of the Sacramento-San Joaquin Delta. The San Francisco Estuary conveys the waters of the Sacramento and San Joaquin Rivers to the Pacific Ocean. Located on the central coast of California, the Bay system functions as the only drainage outlet for waters of the Central Valley. It also marks a natural topographic separation between the northern and southern coastal mountain ranges. The Region's waterways, wetlands, and bays form the centerpiece of the fourth largest metropolitan area in the United States, including all or major portions of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties.

The San Francisco Bay Water Board has jurisdiction over the part of the San Francisco Estuary, which includes all of the San Francisco Bay segments extending east to the Delta (Winter Island near Pittsburg). The San Francisco Estuary sustains a highly dynamic and complex environment. Within each section of the Bay system lie deepwater areas that are adjacent to large expanses of very shallow water. Salinity levels range from hypersaline to fresh water and water temperature varies widely. The Bay system's deepwater channels, tidelands, marshlands, fresh water streams, and rivers provide a wide variety of habitats within the Region. Coastal embayments including Tomales Bay and Bolinas Lagoon are also located in this Region. The Central Valley Water Board has jurisdiction over the Delta and rivers extending further eastward.

The Sacramento and San Joaquin Rivers enter the Bay system through the Delta at the eastern end of Suisun Bay and contribute almost all of the fresh water inflow into the Bay. Many smaller rivers and streams also convey fresh water to the Bay system. The rate and timing of these fresh water flows are among the most important factors influencing physical, chemical, and biological conditions in the Estuary. Flows in the Region are highly seasonal, with more than 90 percent of the annual runoff occurring during the winter rainy season between November and April.

The San Francisco Estuary is made up of many different types of aquatic habitats that support a great diversity of organisms. Suisun Marsh in Suisun Bay is the largest brackish-water marsh in the United States. San Pablo Bay is a shallow embayment strongly influenced by runoff from the Sacramento and San Joaquin Rivers.

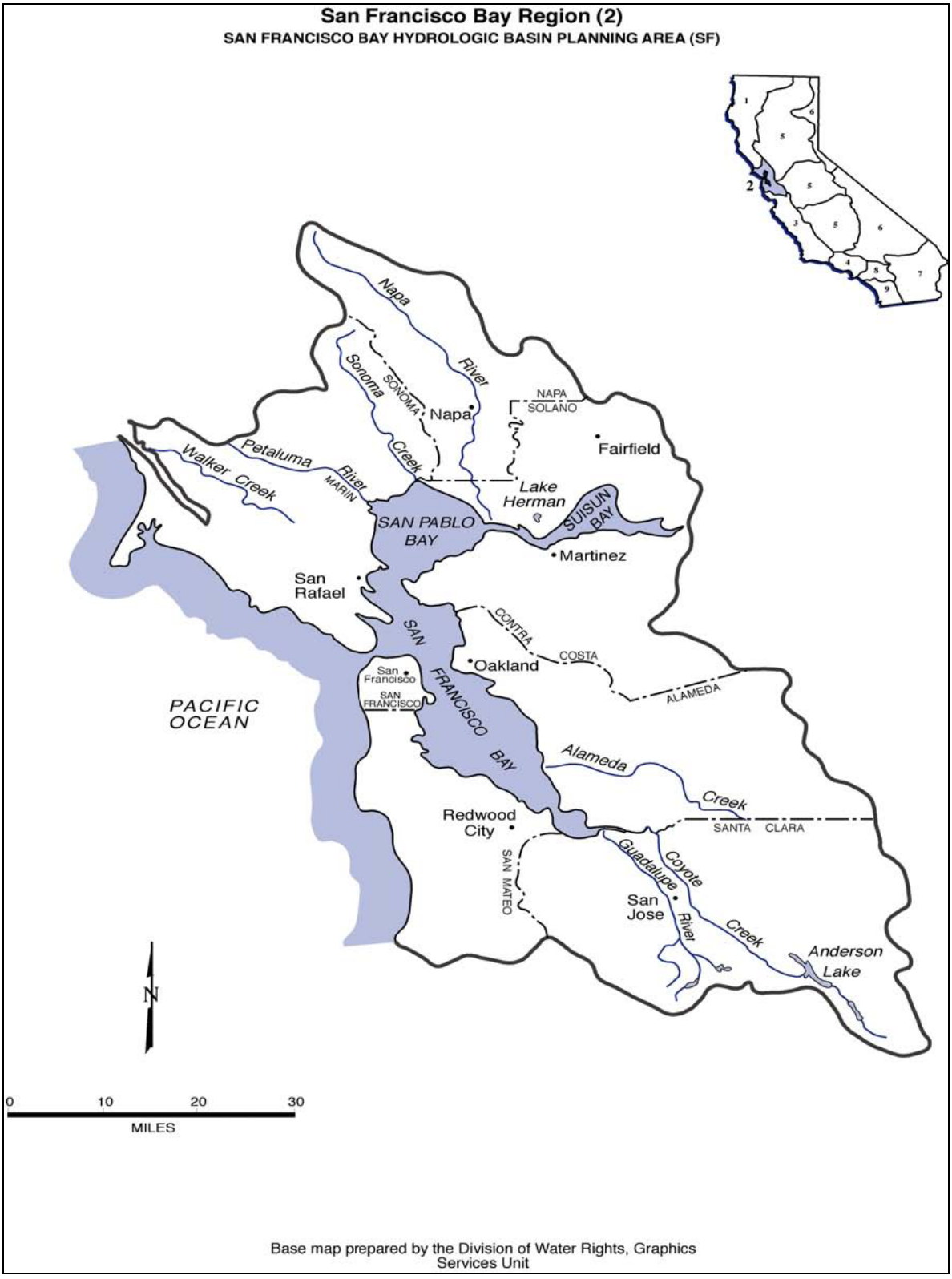


**Figure 2: San Francisco Bay Region Hydrologic Basin**

The Central Bay is the portion of the Bay most influenced by oceanic conditions. The South Bay, with less freshwater inflow than the other portions of the Bay, acts more like a tidal lagoon. Together these areas sustain rich communities of aquatic life and serve as important wintering sites for migrating waterfowl and spawning areas for anadromous fish.

***Central Coast Region (Region 3)***

The Central Coast Region comprises all basins (including Carrizo Plain in San Luis Obispo and Kern Counties) draining into the Pacific Ocean from the southern boundary of the Pescadero Creek watershed in San Mateo and Santa Cruz Counties; to the southeastern boundary of the Rincon Creek watershed, located in western Ventura County (Figure 3).

The Region extends over a 300-mile long by 40-mile wide section of the state's central coast. Its geographic area encompasses all of Santa Cruz, San Benito, Monterey, San Luis Obispo, and Santa Barbara Counties as well as the southern one-third of Santa Clara County, and small portions of San Mateo, Kern, and Ventura Counties. Included in the Region are urban areas such as the Monterey Peninsula and the Santa Barbara coastal plain; prime agricultural lands such as the Salinas, Santa Maria, and Lompoc Valleys; National Forest lands; extremely wet areas such as the Santa Cruz Mountains; and arid areas such as the Carrizo Plain.

Water bodies in the Central Coast Region are varied. Enclosed bays and harbors in the region include Morro Bay, Elkhorn Slough, Tembladero Slough, Santa Cruz Harbor, Moss Landing Harbor, San Luis Harbor, and Santa Barbara Harbor. Several small estuaries also characterize the region, including the Santa Maria River Estuary, San Lorenzo River Estuary, Big Sur River Estuary, and many others. Major rivers, streams, and lakes include San Lorenzo River, Santa Cruz River, San Benito River, Pajaro River, Salinas River, Santa Maria River, Cuyama River, Estrella River and Santa Ynez River, San Antonio Reservoir, Nacimiento Reservoir, Twitchel Reservoir, and Cuchuma Reservoir.

The economic and cultural activities in the basin have been primarily agrarian. Livestock grazing persists but has been combined with hay cultivation in the valleys. Irrigation, with pumped local groundwater, is very significant in intermountain valleys throughout the basin. Mild winters result in long growing seasons and continuous cultivation of many vegetable crops in parts of the basin.

While agriculture and related food processing activities are major industries in the Region, oil production, tourism, and manufacturing contribute heavily to its economy. The northern part of the Region has experienced a significant influx of electronic manufacturing; while offshore oil exploration and production have heavily influenced the southern part.

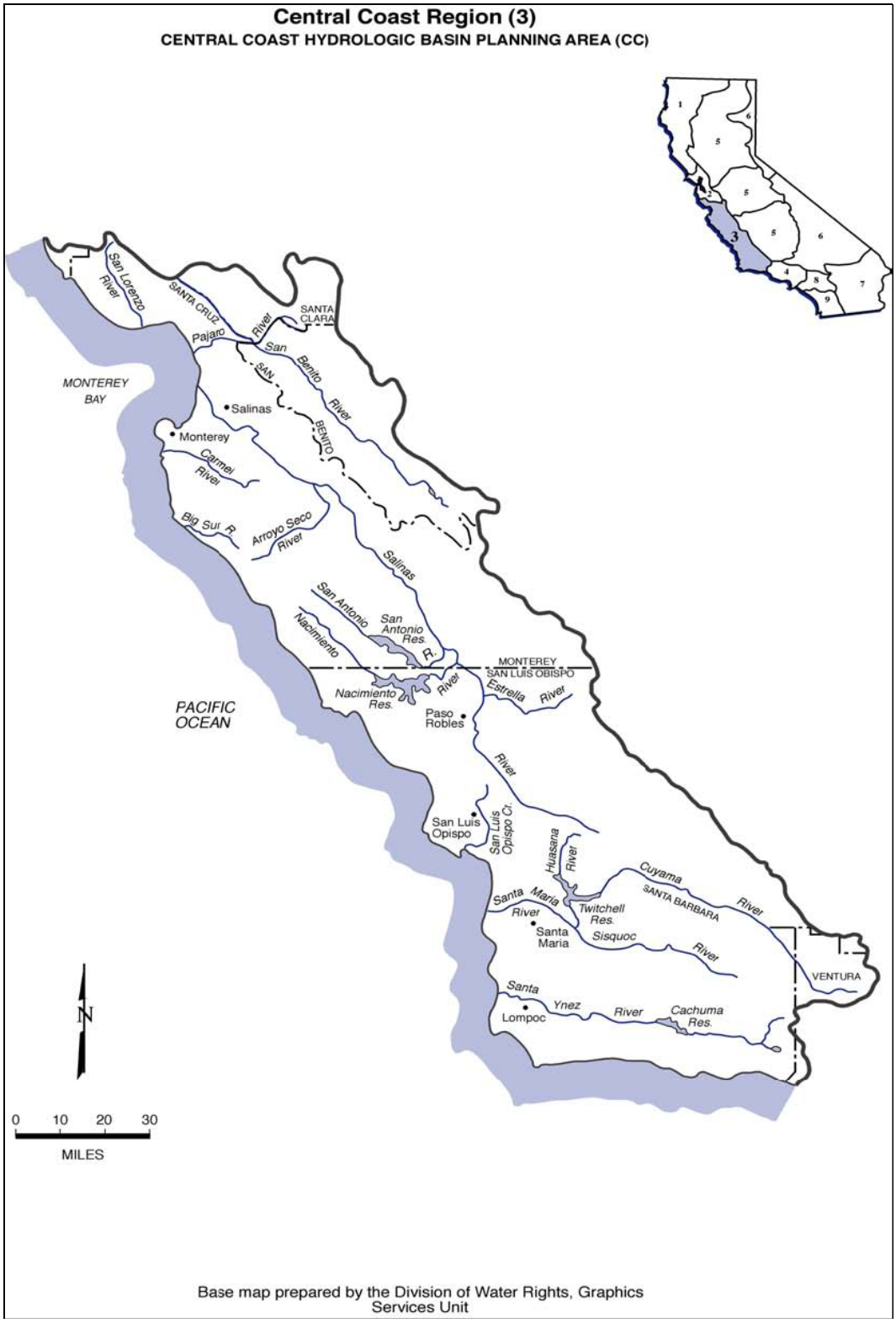


**Figure 3: Central Coast Region Hydrologic Basin**

Water quality problems frequently encountered in the Central Coast Region include excessive salinity or hardness of local groundwater. Increasing nitrate concentration is a growing problem in a number of areas, in both groundwater and surface water. Surface waters suffer from bacterial contamination, nutrient enrichment, and siltation in a number of watersheds. Pesticides are a concern in agricultural areas and associated downstream water bodies.

### *Los Angeles Region (Region 4)*

The Los Angeles Region comprises all basins draining into the Pacific Ocean between the southeastern boundary of the watershed of Rincon Creek, located in western Ventura County, and a line which coincides with the southeastern boundary of Los Angeles County, from the Pacific Ocean to San Antonio Peak, and follows the divide, between the San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages (Figure 4).

The Region encompasses all coastal drainages flowing into the Pacific Ocean between Rincon Point (on the coast of western Ventura County) and the eastern Los Angeles County line, as well as the drainages of five coastal islands (Anacapa, San Nicolas, Santa Barbara, Santa Catalina, and San Clemente). In addition, the Region includes all coastal waters within three miles of the continental and island coastlines. Two large deepwater harbors (Los Angeles and Long Beach Harbors) and one smaller deepwater harbor (Port Hueneme) are contained in the Region. There are small craft marinas within the harbors, as well as tank farms, naval facilities, fish processing plants, boatyards, and container terminals. Several small-craft marinas also exist along the coast (Marina del Ray, King Harbor, Ventura Harbor); these contain boatyards, other small businesses, and dense residential development.

Several large, primarily concrete-lined rivers (Los Angeles River, San Gabriel River) lead to unlined tidal prisms which are influenced by marine waters. Salinity may be greatly reduced following rains since these rivers drain large urban areas composed of mostly impermeable surfaces. Some of these tidal prisms receive a considerable amount of freshwater throughout the year from publicly-owned treatment works (POTWs) discharging tertiary-treated effluent.

Lagoons are located at the mouths of other rivers draining relatively undeveloped areas (Mugu Lagoon, Malibu Lagoon, Ventura River Estuary, and Santa Clara River Estuary). There are also a few isolated coastal brackish water bodies receiving runoff from agricultural or residential areas. Santa Monica Bay, which includes the Palos Verdes Shelf, dominates a large portion of the open coastal water bodies in the Region. The Region's coastal water bodies also include the areas along the shoreline of Ventura County and the waters surrounding the five offshore islands in the Region.

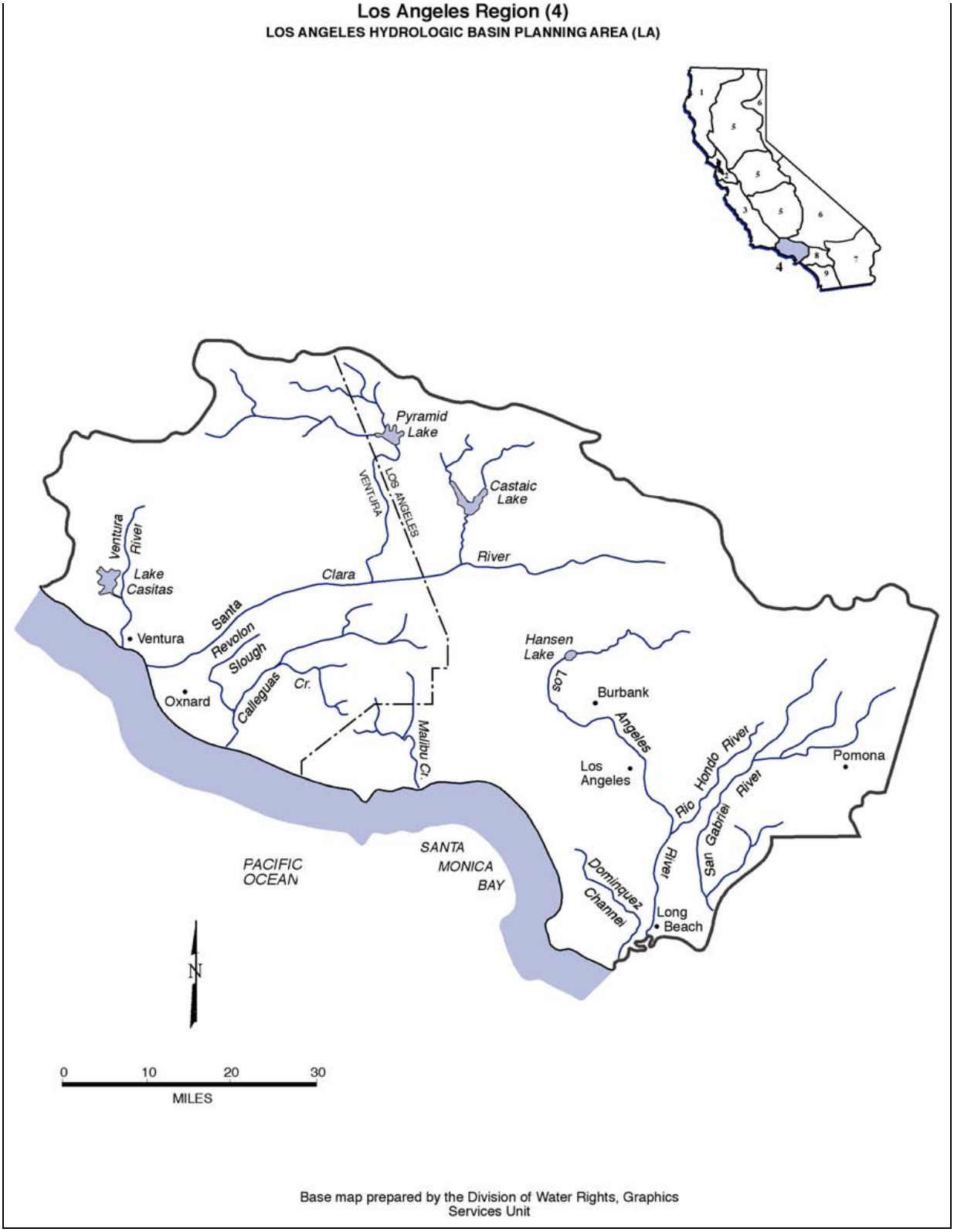


**Figure 4: Los Angeles Region Hydrologic Basin**

### *Central Valley Region (Region 5)*

The Central Valley Region includes approximately 40 percent of the land in California stretching from the Oregon border to the Kern County/ Los Angeles County line. The region is divided into three basins. For planning purposes, the Sacramento River Basin and the San Joaquin River Basin are covered under one Basin Plan and the Tulare Lake Basin is covered under a separate distinct one.

The Sacramento River Basin covers 27,210 square miles and includes the entire area drained by the Sacramento River (Figure 5). The principal streams are the Sacramento River and its larger tributaries: the Pitt, Feather, Yuba, Bear, and American Rivers to the East; and Cottonwood, Stony, Cache, and Putah Creek to the west. Major reservoirs and lakes include Shasta, Oroville, Folsom, Clear Lake, and Lake Berryessa.

The San Joaquin River Basin covers 15,880 square miles and includes the entire area drained by the San Joaquin River (Figure 6). Principal streams in the basin are the San Joaquin River and its larger tributaries: the Consumnes, Mokelumne, Calaveras, Stanislaus, Tuolumne, Merced, Chowchilla, and Fresno Rivers. Major reservoirs and lakes include Pardee, New Hogan, Millerton, McClure, Don Pedro, and New Melones.

The Tulare Lake Basin covers approximately 16,406 square miles and comprises the drainage area of the San Joaquin Valley south of the San Joaquin River (Figure 7). The planning boundary between the San Joaquin River Basin and the Tulare Lake Basin is defined by the northern boundary of Little Pinoche Creek Basin eastward along the channel of the San Joaquin River to Millerton Lake in the Sierra Nevada foothills, and then along the southern boundary of the San Joaquin River drainage basin. Main Rivers within the basin include the King, Kaweah, Tule, and Kern Rivers, which drain to the west face of the Sierra Nevada Mountains. Imported surface water supplies enter the basin through the San Luis Drain-California Aqueduct System, Friant-Kern Channel, and the Delta Mendota Canal.

The two northernmost basins are bound by the crests of the Sierra Nevada on the east and the Coast Range and Klamath Mountains on the west. They extend about 400 miles from the California-Oregon border southward to the headwaters of the San Joaquin River. These two river basins cover about one fourth of the total area of the state and over 30 percent of the state's irrigable land. The Sacramento and San Joaquin Rivers furnish roughly 50 percent of the state's water supply.

The Sacramento and San Joaquin Rivers meet and form the Delta, which ultimately drains into the San Francisco Bay. The Delta is a maze of river channels and diked islands covering roughly 1,150 square miles, including 78 square miles of water area. Two major water projects located in the South Delta, the Federal Central Valley Project and the State Water Project, deliver water from the Delta to Southern California, the San Joaquin Valley, Tulare Lake Basin, the San Francisco Bay Area, as well as within the Delta boundaries.

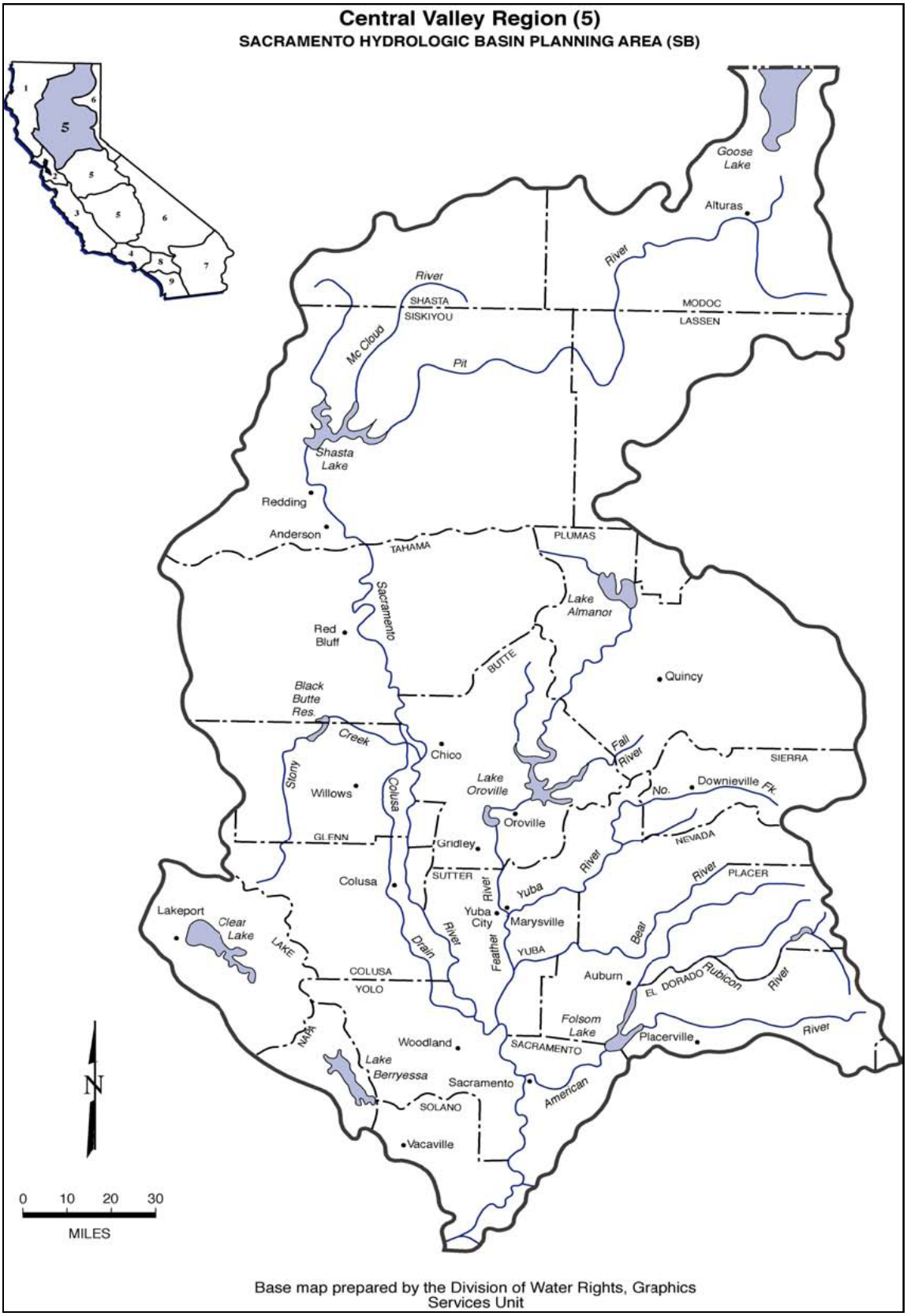


**Figure 5: Central Valley Region, Sacramento Region Hydrologic Basin**

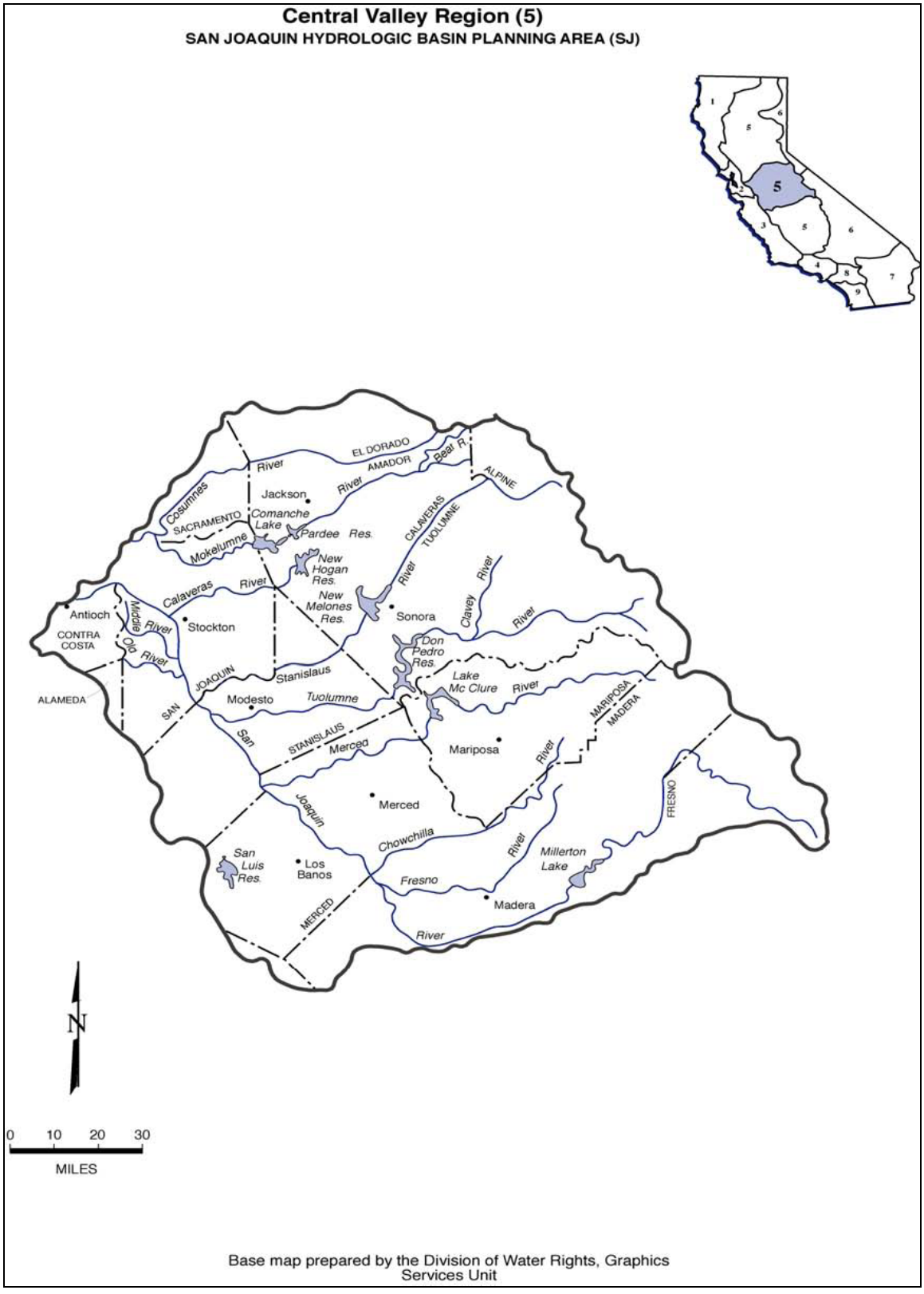


**Figure 6: Central Valley Region, San Joaquin Hydrologic Basin**

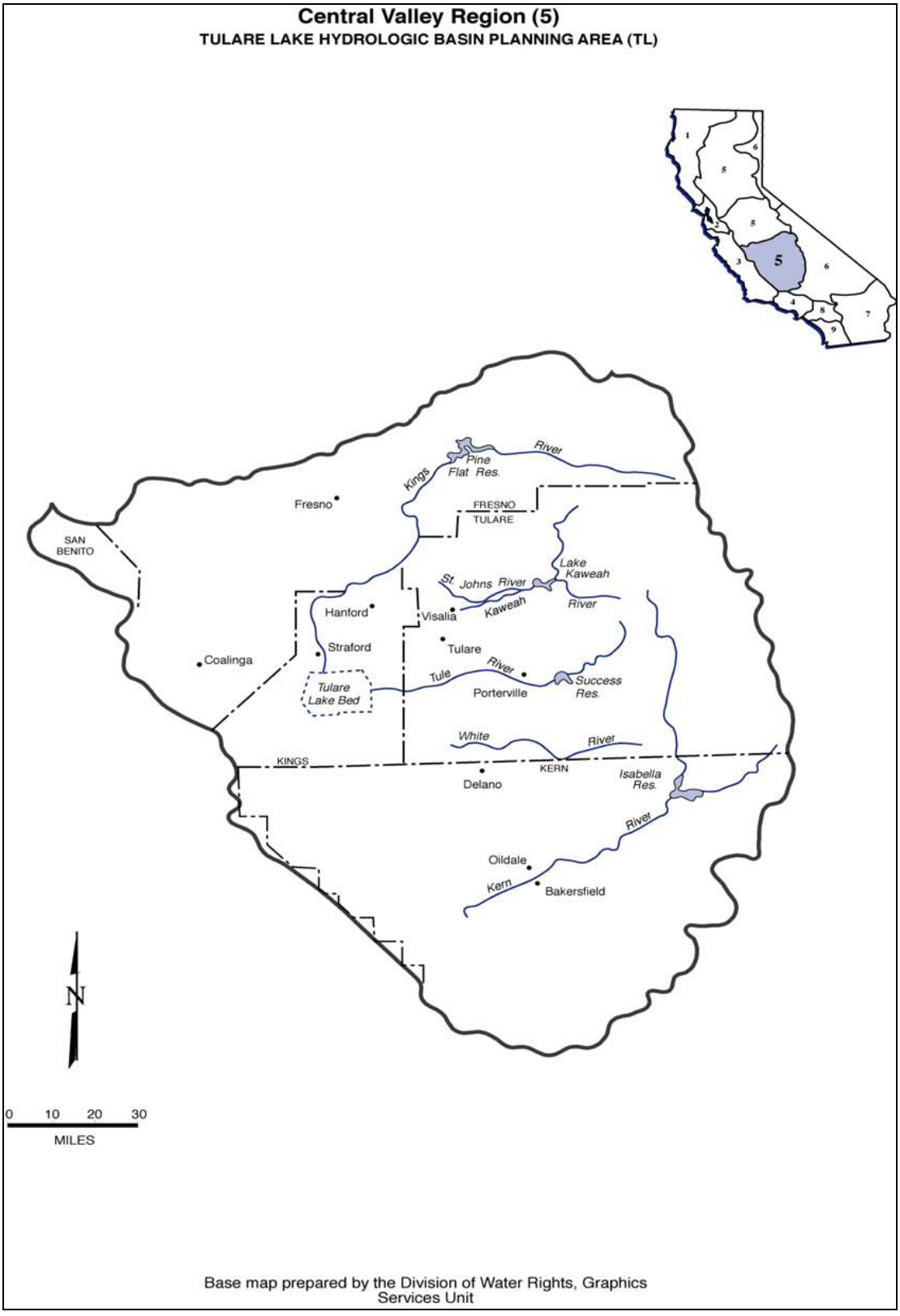


**Figure 7: Central Valley Region, Tulare Lake Hydrologic Basin**

### *Lahontan Region (Region 6)*

The Lahontan Region has historically been divided into North and South Lahontan Basins at the boundary between the Mono Lake and East Walker River watersheds (Figures 8 and 9). It is about 570 miles long and has a total area of 33,131 square miles. The Lahontan Region includes the highest (Mount Whitney) and lowest (Death Valley) points in the contiguous United States. The topography of the remainder of the region is diverse.

The Region is generally in a rain shadow; however, annual precipitation amounts can be high (up to 70 inches) at higher elevations. Most precipitation in the mountainous areas falls as snow. Desert areas receive relatively little annual precipitation (less than 2 inches in some locations) but this can be concentrated and lead to flash flooding. Temperature extremes recorded in the Lahontan Region range from –45$^{o}$F at Boca to 134$^{o}$F in Death Valley. The varied topography, soils, and microclimates of the Lahontan Region support a corresponding variety of plant and animal communities. Vegetation ranges from sagebrush and creosote bush scrub in the desert areas to pinyon-juniper and mixed conifer forest at higher elevations. Subalpine and alpine communities occur on the highest peaks. Wetland and riparian plant communities, including marshes, meadows, “sphagnum” bogs, riparian deciduous forest, and desert washes, are particularly important for wildlife, given the general scarcity of water in the Region.

Much of the Lahontan Region is in public ownership, with land use controlled by agencies such as the U.S. Forest Service (USFS), National Park Service, Bureau of Land Management, various branches of the military, the California State Department of Parks and Recreation, and the City of Los Angeles Department of Water and Power. While the permanent resident population of the Region is low, most of it is concentrated in high-density communities in the South Lahontan Basin. In addition, millions of visitors use the Lahontan Region for recreation each year. Other major sectors of the economy are resource extraction, agriculture, and defense-related activities.

The Lahontan Region includes over 700 lakes, 3,170 miles of streams and 1,581 square miles of groundwater basins. There are twelve major watersheds in the North Lahontan Basin. Among these are the Eagle Lake, Susan River/Honey Lake, Truckee, Carson, and Walker River watersheds. The South Lahontan Basin includes three major surface water systems (the Mono Lake, Owens River, and Mojave River watersheds) and a number of separate closed groundwater basins. Segments of the East Fork Carson and West Walker Rivers are included in the State Wild and Scenic River system.

Water quality problems in the Lahontan Region are largely related to nonpoint sources (including erosion from construction, timber harvesting, and livestock grazing), storm water, and acid drainage from inactive mines, and individual wastewater disposal systems (septic tanks).

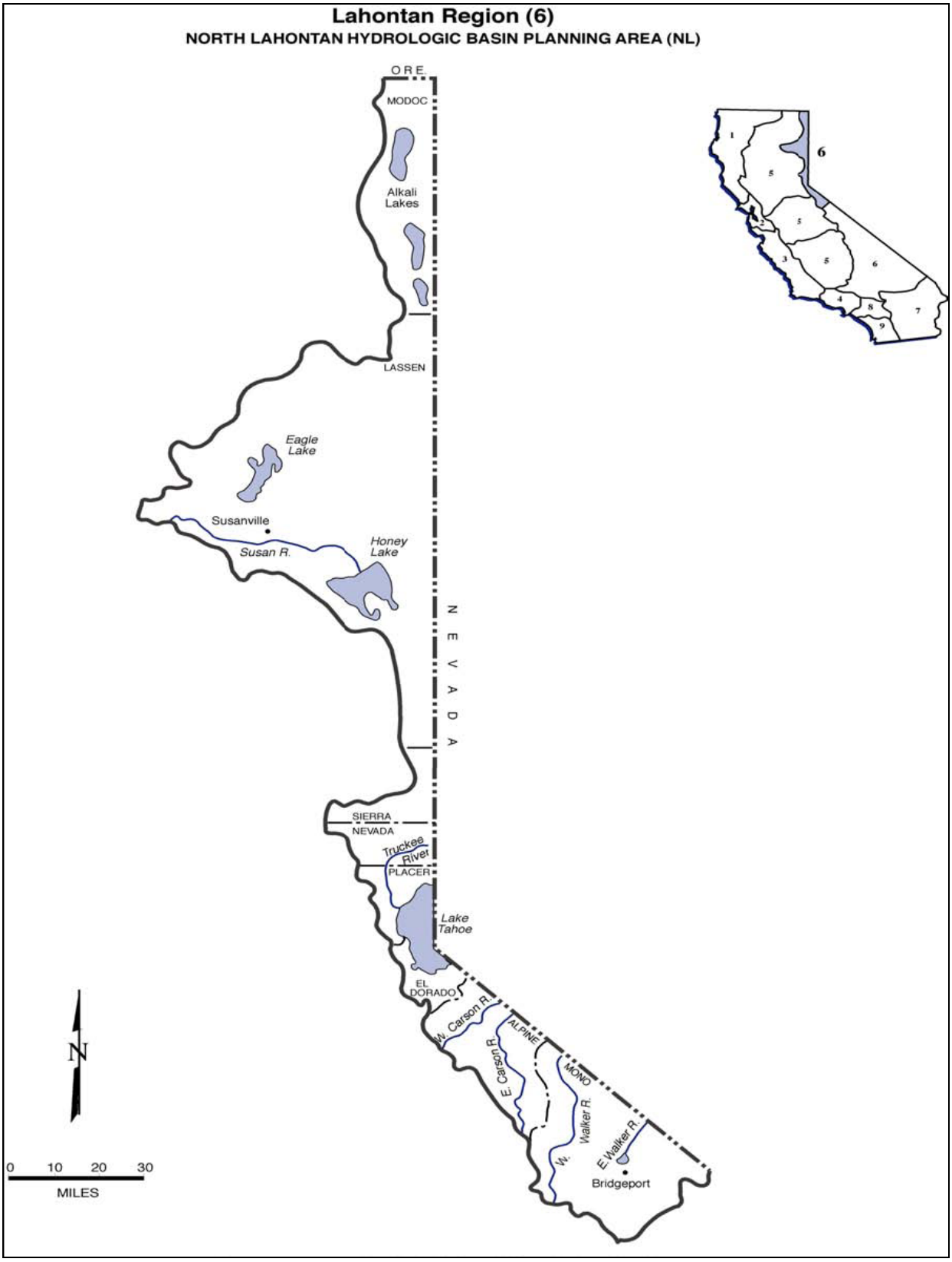


**Figure 8: Lahontan Region, North Lahontan Hydrologic Basin**

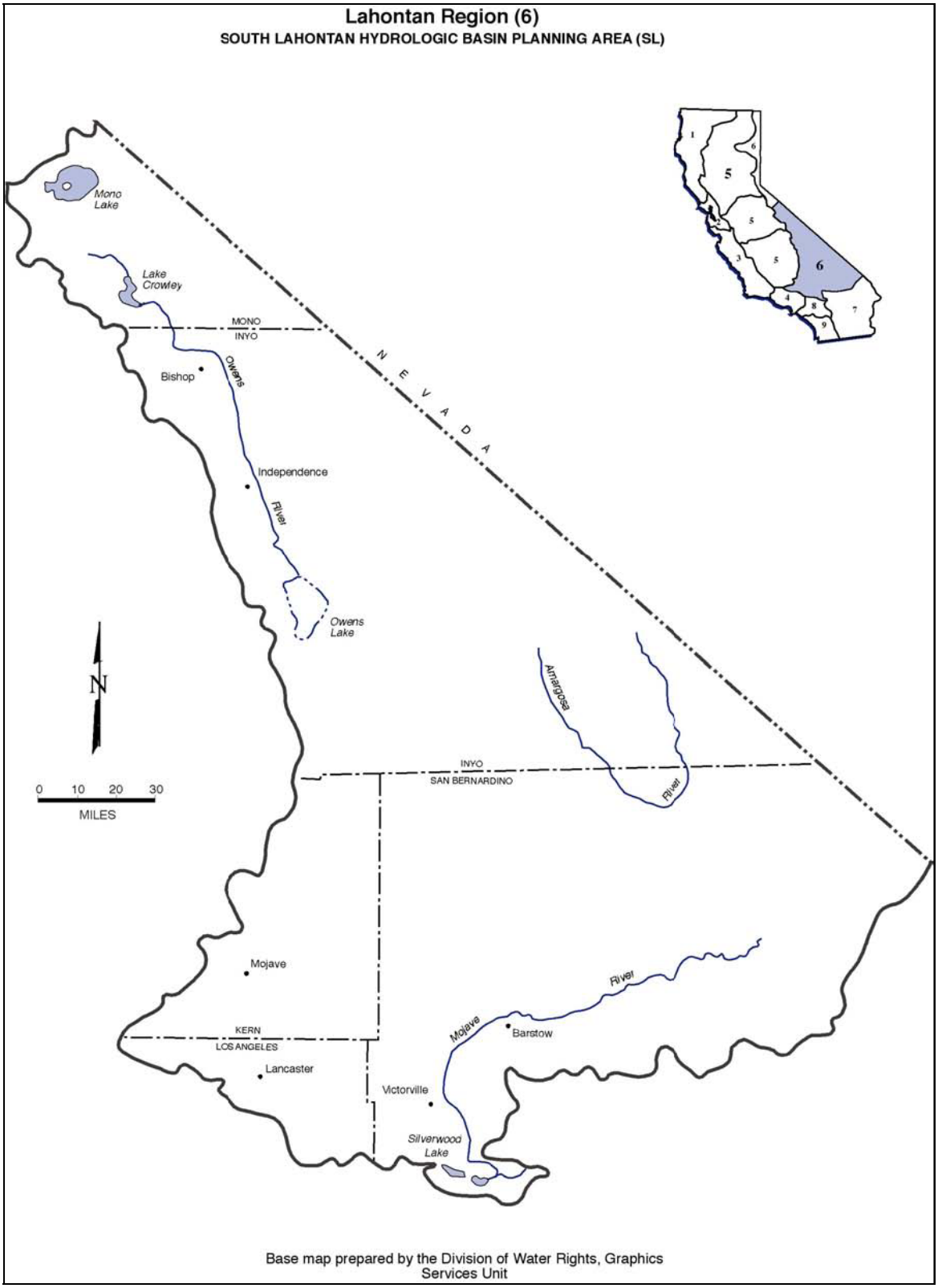


**Figure 9: Lahontan Region, South Lahontan Hydrologic Basin**

### *Colorado River Basin Region (Region 7)*

The Colorado River Basin Region covers approximately 13 million acres (20,000 square miles) in the southeastern portion of California (Figure 10). It includes all of Imperial County and portions of San Bernardino, Riverside, and San Diego Counties. It shares a boundary for 40-miles on the northeast with the State of Nevada, on the north by the New York, Providence, Granite, Old Dad, Bristol, Rodman, and Ord Mountain ranges, on the west by the San Bernardino, San Jacinto, and Laguna Mountain ranges, on the south by the Republic of Mexico, and on the east by the Colorado River and State of Arizona.

Geographically, the Region represents only a small portion of the total Colorado River drainage area, which includes portions of Arizona, Nevada, Utah, Wyoming, Colorado, New Mexico, and Mexico. A significant geographical feature of the Region is the Salton Trough, which contains the Salton Sea and the Coachella and Imperial Valleys. The two valleys are separated by the Salton Sea, which covers the lowest area of the depression. The trough is a geologic structural extension of the Gulf of California. Much of the agricultural economy and industry of the Region is located in the Salton Trough. There are industries associated with agriculture, as well as increasing development of geothermal industries.

The present Salton Sea was formed between 1905 and 1907 by overflow of the Colorado River. The Salton Sea serves as a drainage reservoir for irrigation return water and storm water from the Coachella Valley, Imperial Valley, and Borrego Valley, and also receives drainage water from the Mexicali Valley in Mexico. The Salton Sea is California's largest inland body of water and provides a very important wildlife habitat and sport fishery. Development along California's 230 mile reach of the Colorado River, ,includes agricultural areas in Palo Verde Valley and Bard Valley, urban centers at Needles, Blythe, and Winterhaven, and numerous small recreational communities. Some mining operations are located in the surrounding mountains.

The Region has the driest climate in California. The winters are mild and summers are hot. Temperatures range from below freezing to over 120 $^{o}$F. Snow falls in the Region's higher elevations, with mean seasonal precipitation ranging from 30 to 40 inches in the upper San Jacinto and San Bernardino Mountains. The lower elevations receive relatively little rainfall. An average four inches of precipitation occurs along the Colorado River, with much of this coming from late summer thunderstorms moving north from Mexico. Precipitation over the entire area occurs mostly from November through April, and August through September, but its distribution and intensity are often sporadic.

The Region provides habitat for a variety of native and introduced species of wildlife. Animals tolerant of arid conditions, including small rodents, coyotes, foxes, birds, and a variety of reptiles, inhabit large areas within the Region. Along the Colorado River and in the higher elevations of the San Bernardino and San Jacinto Mountains where water is more abundant, deer, bighorn sheep, and a diversity of small animals exist.

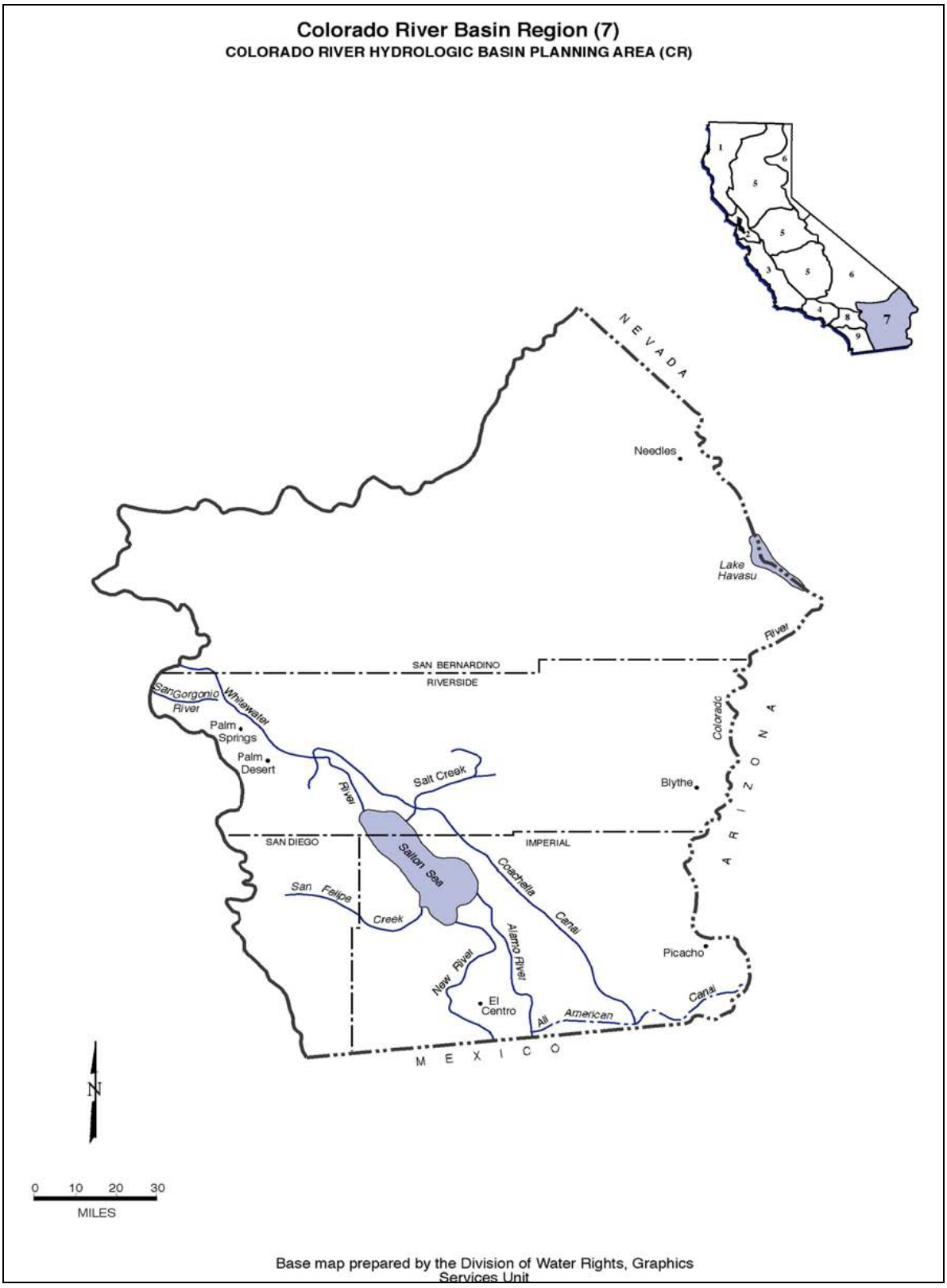


**Figure 10: Colorado River Region Hydrologic Basin**

Practically all of the fishes inhabiting the Region are introduced species. The most abundant species in the Colorado River and irrigation canals include largemouth bass, small-mouth bass, flathead and channel catfish, yellow bullhead, bluegill, red-ear sunfish, black crappie, carp, striped bass, threadfin shad, red shiner, and, in the colder water above Lake Havasu, rainbow trout. Grass carp have been introduced into sections of the All American Canal system for aquatic weed control. Fish inhabiting agricultural drains in the Region generally include mosquito fish, mollies, red shiners, carp, and tilapia, although locally significant populations of catfish, bass, and sunfish occur in some drains. A considerable sport fishery exists in the Salton Sea, with orange-mouth corvina, gulf croaker, sargo, and tilapia predominating.

The Salton Sea National Wildlife Refuge and state waterfowl management areas are located in or near the Salton Sea. Located along the Colorado River are the Havasu, Cibola, and Imperial National Wildlife Refuges. The Region provides habitat for certain endangered/threatened species of wildlife including desert pupfish, razorback sucker, Yuma clapper rail, black rail, least Bell's vireo, yellow billed cuckoo, desert tortoise, and peninsular bighorn sheep.

***Santa Ana Region (Region 8)***

The Santa Ana Region comprises all basins draining into the Pacific Ocean between the southern boundary of the Los Angeles Region and the drainage divide between Muddy and Moro Canyons, from the ocean to the summit of San Joaquin Hills; along the divide between lands draining into Newport Bay and Laguna Canyon to Niguel Road; along Niguel Road and Los Aliso Avenue to the divide between Newport Bay and Aliso Creek drainages; and along the divide and the southeastern boundary of the Santa Ana River drainage to the divide between Baldwin Lake and Mojave Desert drainages; to the divide between the Pacific Ocean and Mojave Desert drainages (Figure 11).

The Santa Ana Region is the smallest of the nine Regions in the state (2,800 square miles) and is located in southern California, roughly between Los Angeles and San Diego. Although small geographically, the Region's four-plus million residents (1993 estimate) make it one of the most densely populated Regions. The climate of the Santa Ana Region is classified as Mediterranean: generally dry in the summer with mild, wet winters. The average annual rainfall in the Region is about fifteen inches, most of it occurring between November and March. The enclosed bays in the Region include Newport Bay, Bolsa Bay (including Bolsa Chica Marsh), and Anaheim Bay. Principal rivers include Santa Ana, San Jacinto and San Diego. Lakes and reservoirs include Big Bear, Hemet, Mathews, Canyon Lake, Lake Elsinore, Santiago Reservoir, and Perris Reservoir.

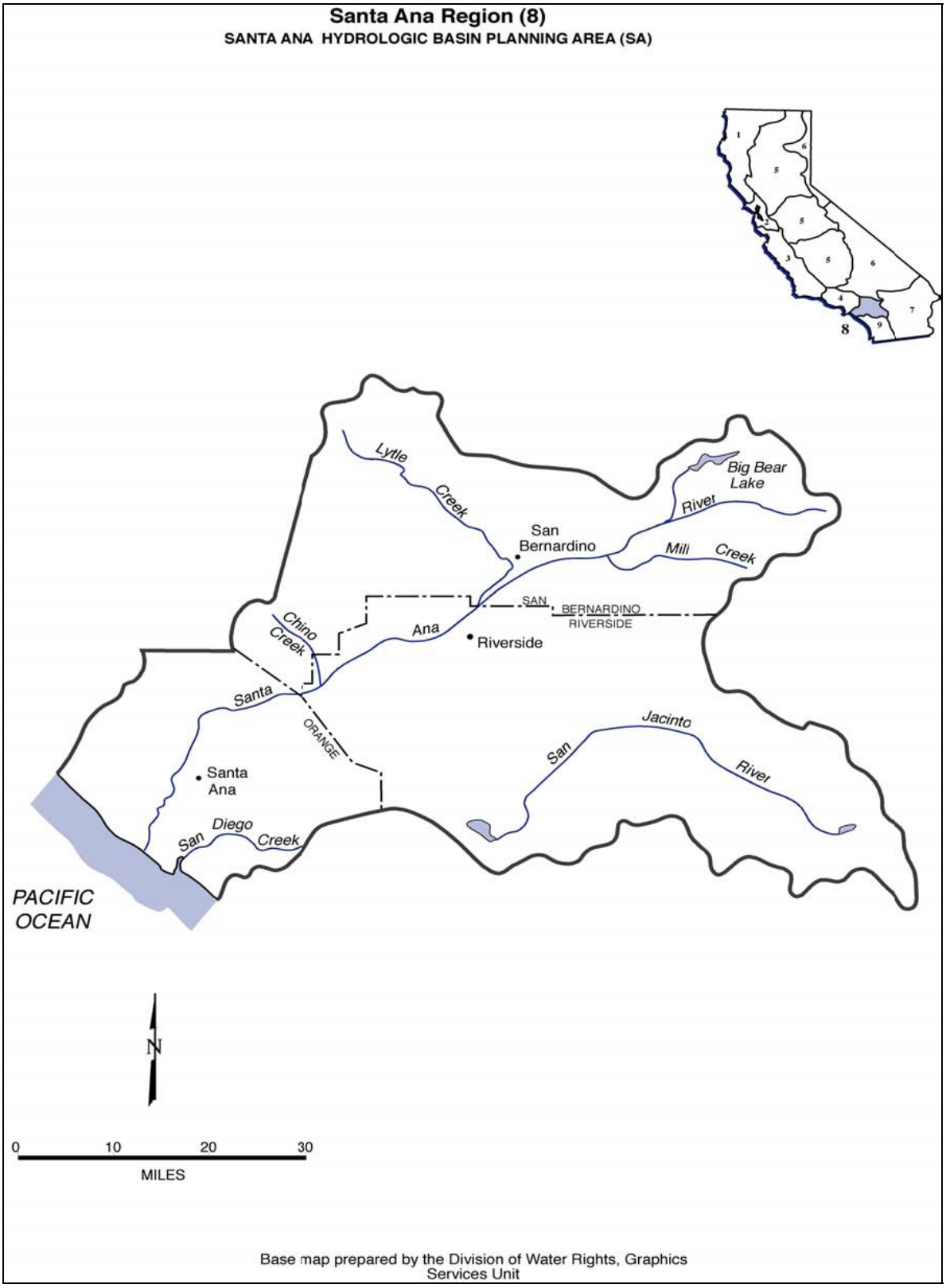


**Figure 11: Santa Ana Region Hydrologic Basin**

### *San Diego Region (Region 9)*

The San Diego Region comprises all basins draining into the Pacific Ocean between the southern boundary of the Santa Ana Region and the California-Mexico boundary (Figure 12). The San Diego Region is located along the coast of the Pacific Ocean from the Mexican border to north of Laguna Beach. The Region is rectangular in shape and extends approximately 80-miles along the coastline and 40 miles east to the crest of the mountains. The Region includes portions of San Diego, Orange, and Riverside Counties. The population of the Region is heavily concentrated along the coastal strip. Six deepwater sewage outfalls and one across the beach discharge from the new border plant at the Tijuana River and empties into the ocean. Two harbors, Mission Bay and San Diego Bay, support major recreational and commercial boat traffic. Coastal lagoons are found along the San Diego County coast at the mouths of creeks and rivers.

Weather patterns are Mediterranean in nature with an average rainfall of approximately ten inches per year occurring along the coast. Almost all the rainfall occurs during wet cool winters. The Pacific Ocean generally has cool water temperatures due to upwelling. This nutrient-rich water supports coastal beds of giant kelp. The cities of San Diego, National City, Chula Vista, Coronado, and Imperial Beach surround San Diego Bay in the southern portion of the Region.

San Diego Bay is long and narrow, 15 miles in length and approximately one mile across. A deep-water harbor, San Diego Bay has experienced waste discharge from former sewage outfalls, industries, and urban runoff. Up to 9,000 vessels may be moored there. San Diego Bay also hosts four major U.S. Navy bases with approximately 80 surface ships and submarines. Coastal waters include bays, harbors, estuaries, beaches, and open ocean. Deep draft commercial harbors include San Diego Bay and Oceanside Harbor and shallower harbors include Mission Bay and Dana Point Harbor. Tijuana Estuary, Sweetwater Marsh, San Diego River Flood Control Channel, Kendal-Frost Wildlife Reserve, San Dieguito River Estuary, San Elijo Lagoon, Batiquitos Lagoon, Agua Hedionda Lagoon, Buena Vista Lagoon, San Luis Rey Estuary, and Santa Margarita River Estuary are the important estuaries of the Region.

There are thirteen principal stream systems in the Region originating in the western highlands and flowing to the Pacific Ocean. From north to south these are Aliso Creek, San Juan Creek, San Mateo Creek, San Onofre Creek, Santa Margarita River, San Luis Ray River, San Marcos Creek, Escondido Creek, San Dieguito River, San Diego River, Sweetwater River, Otay River, and the Tijuana River. Most of these streams have both perennial and ephemeral components due to the rainfall pattern in the Region. Surface water impoundments capture flow from almost all the major streams.

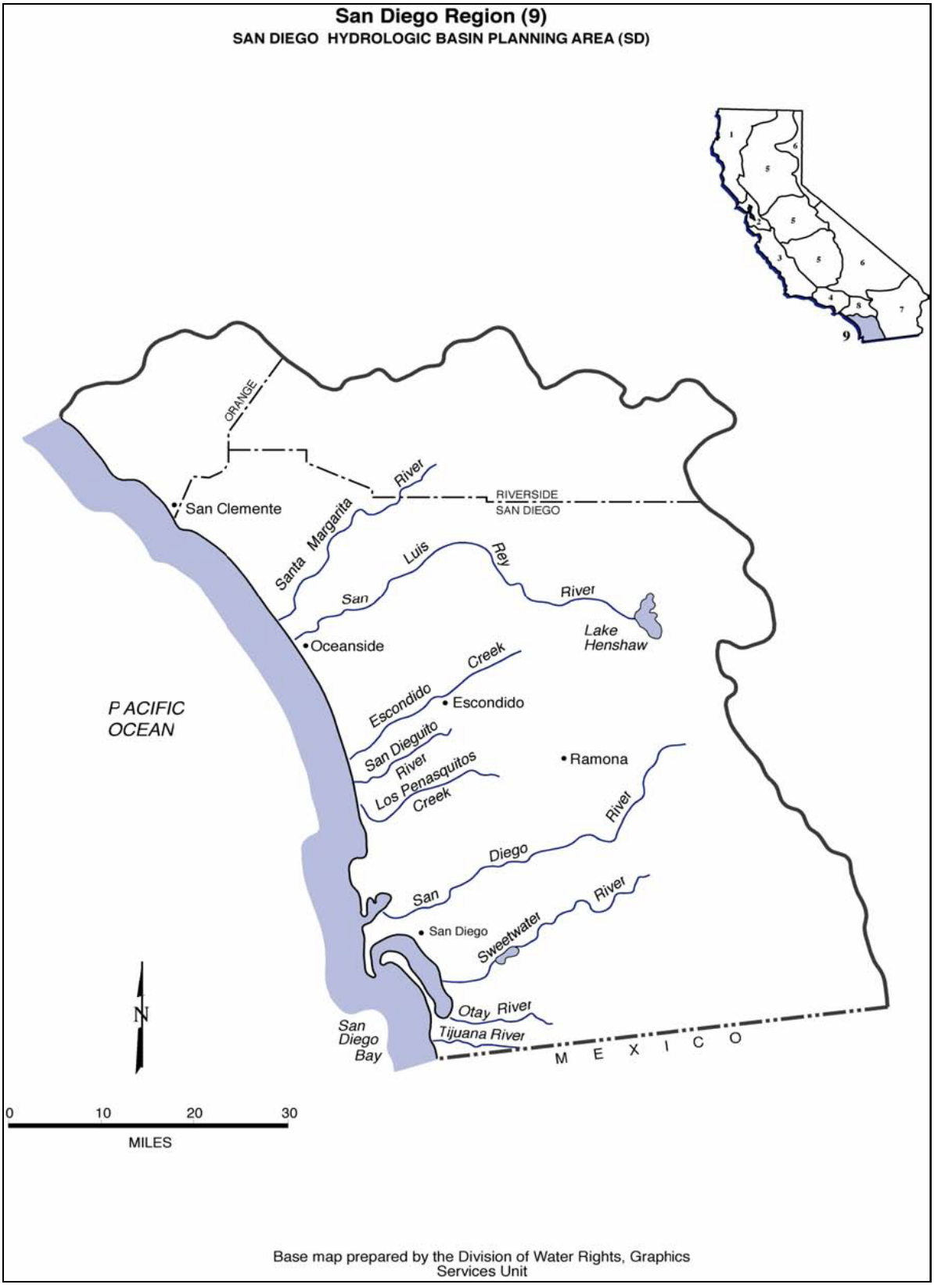


**Figure 12: San Diego Region Hydrologic Basin**

# 5. ANALYSES OF POLICY ISSUES AND ALTERNATIVES

## ISSUE 1: SCOPE

### *Existing Regulatory Conditions*

Currently, lacking a cohesive statewide policy, there is no statewide uniformity in authorizing compliance schedules in NPDES permits; nor is there statewide consistency in the implementation of these provisions. The use of compliance schedules as a regulatory tool has instead been addressed in piecemeal fashion, both statewide and regionally. The resulting regulatory patchwork is complicated for stakeholders to understand and for regulators to apply.

Existing statewide and regional compliance schedule provisions are discussed in detail in the "Regulatory Background" section, above, and have been summarized and compared in Table 1.

The State Water Board has adopted several statewide water quality control plans, including the "*Water Quality Control Plan for Ocean Waters of California*" [40], the *"Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California"*[41]*,* and the *"Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*"[42]*,* which contain enforceable standards for the waters they address. None of these statewide plans specifically authorize compliance schedules in NPDES permits, although the plans may be implemented in part through NPDES permits.

The State Water Board has also adopted a number of water quality policies. The SIP is the only one of these policies that authorizes compliance schedules in NPDES permits. The SIP authorizes compliance schedules ***only*** for effluent limitations established to achieve compliance with CTR promulgated criteria for priority pollutants. The SIP specifies that such compliance schedules must contain a final compliance date based on the shortest practicable time required to achieve compliance. The SIP allows an existing discharger to be granted a compliance schedule of up to five years from the date of a NPDES permit issuance, re-issuance, or modification based on a demonstration that it is infeasible for the discharger to achieve immediate compliance with a CTR criterion.

Where a compliance schedule exceeds one year, the SIP requires the schedule to include a series of required interim actions with deadlines that reflects a realistic assessment of the shortest practicable time required to perform each task. If the final compliance date needs to extend beyond the permit term, the SIP requires the final compliance date and supporting explanation to be included in the permit findings. SIP-authorized compliance schedules expire on May 18, 2010.

[40] Known as the "Ocean Plan".
[41] Known as the "Thermal Plan".
[42] Known as the "Bay-Delta Plan".

Several Regional Water Board Basin Plans contain general compliance schedule provisions that allow schedules in NPDES permits for new, revised, or newly interpreted water quality standards. Five of the nine Regional Water Boards (the North Coast, San Francisco Bay, Los Angeles, Central Valley, and the Santa Ana Water Boards) have successfully amended their Basin Plans to authorize incorporation of compliance schedules in NPDES permit requirements, which are discussed in more detail in the "Regulatory Background" section, above. In addition, the San Diego Water Board adopted compliance schedule authorization provisions on November 9, 2005, which the State Water Board and OAL have approved (the USEPA has yet to approve this Basin Plan amendment). The Lahontan Water Board adopted a compliance schedule policy on April 12, 2006 that was later withdrawn from State Water Board consideration.

Regional Water Board resolutions and language authorizing compliance schedules for their respective Regions are found in Appendix C in the back of this staff report. Table 1 summarizes the various adopted regional compliance schedule provisions and compares them to the SIP.

### *Alternatives for State Water Board Action*

The alternatives below are listed in order of increasing scope.

#### ***Alternative 1.a: No action.***

This alternative would continue the status quo. The State Water Board would not adopt a comprehensive statewide policy on compliance schedules in NPDES permits. The existing NPDES compliance schedule provisions contained in the SIP and the individual Basin Plans would remain in effect. NPDES compliance schedules would continue to be authorized and implemented differently from Region to Region.

Those Regional Water Boards that do not have explicit NPDES compliance schedule authorization in their Basin Plans would be required to issue NPDES permits requiring immediate compliance with new, revised, or newly interpreted water quality standards and to use enforcement orders when it is not possible for a discharger to immediately comply with the specified water quality-based limitations. As a result, some dischargers would be in violation of their permits and subject to potential citizen enforcement action, even when the Regional Water Board found that immediate compliance with a new or revised water quality standard is not practicable.

This alternative would allow Regional Water Boards the greatest flexibility in authorizing and implementing compliance schedules in NPDES permits to best fit the needs of their respective Regions. Under this alternative, Regional Water Boards may change their Basin Plans as desired to allow for compliance schedules tailored to meet Region-specific needs (while still meeting the CWA requirements).

However, this alternative would not meet the project's stated goals of promoting statewide consistency in authorizing and implementing NPDES compliance schedules, and providing a more equitable basis for regulation. Furthermore, the process for adopting Region-specific Basin Plan amendments to include (or update) authorization and implementation provisions for NPDES compliance schedules is lengthy and requires a large commitment of both stakeholder and Water Board resources.

***Alternative 1.b: Adopt a compliance schedule policy that only applies to the Regions without explicit NPDES compliance schedule authorization in their Basin Plan.***

The State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would apply only to regions that do not have NPDES compliance schedule provisions incorporated into their respective Basin Plan (currently, the Central Coast, Lahontan, Colorado River Basin, and San Diego Regions). This policy alternative would ***not*** supersede existing Regional Water Board compliance schedule provisions, but would extend the ability to use NPDES compliance schedules as a regulatory tool to all nine Regional Water Boards, at their discretion.

The Regions *with* existing NPDES compliance schedule provisions would be able to continue to issue and implement NPDES compliance schedules as already authorized by their respective Basin Plans, and would also have the option of further refining the existing compliance schedule provisions through the Basin Plan amendment process. Regions *without* existing NPDES compliance schedule provisions would now be able to (but not be required to) include compliance schedules in NPDES permits. The inclusion of a compliance schedule in a permit would be considered by the Regional Water Board on a case-by-case basis, taking into account the documentation submitted by the discharger to demonstrate that the schedule is justified and as short as possible. Regional Water Boards may choose to issue an enforcement order instead, if appropriate. Regions now *without* existing NPDES compliance schedule provisions would also have the option of adopting Region-specific compliance schedule provisions in the future, should they choose to do so.

Overall, this alternative would provide Regional Water Boards even more flexibility in authorizing and implementing NPDES compliance schedules than the "no action" alternative because all Regions under this alternative would have the authority to issue compliance schedule in NPDES permits. This policy alternative would not apply to Regions *with* existing NPDES compliance schedule authorization, and these Regions would therefore continue to be able to tailor their compliance schedule provisions to meet Region-specific needs. Regional Water Boards *without* existing NPDES compliance schedule authorization would, under this alternative, now be allowed to issue compliance schedules in NPDES permits in accordance with the proposed policy. These Regional Water Boards could also choose to adopt Region-specific compliance schedule provisions at a later date into their Basin Plans.

Alternative 1.b would provide more statewide consistency in authorizing NPDES compliance schedules than the "no action" alternative, because NPDES compliance schedules as a regulatory tool would become available to all dischargers and Regional Water Boards throughout the state (although varying from Region to Region in coverage and length). However, because all Regions would be left with different compliance schedule provisions, this alternative would *not* provide more statewide consistency in the implementation of NPDES compliance schedules than the "no action" alternative. Some stakeholder and Water Board resources would likely be preserved under this alternative, because three Regions (the Central Coast, Lahontan, and Colorado River Basin Regions) would be authorized to include compliance schedules in NPDES permits without being required to go through a lengthy Basin Plan amendment process first.

***Alternative 1.c*: Adopt a compliance schedule policy that supersedes compliance schedule provisions in all Basin Plans, except for effective TMDLs, but does not supersede any statewide plans.**

Under this alternative, the State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would apply to all Regions and that would supersede existing regional compliance schedule provisions in Basin Plans. The Regional Water Boards would be required to follow the proposed policy when establishing compliance schedules for any new, revised, or modified NPDES permit. Under the proposed policy, a compliance schedule already incorporated into a NPDES permit would remain in effect until the permit was reissued or modified[43]. Existing compliance schedule provisions in TMDLs that are in effect as of the effective date of the proposed policy would not be superseded.

Regions *without* effective NPDES compliance schedule authorization (the Central Coast, Lahontan, Colorado River Basin, and San Diego Regions) would, under this alternative, now be able, but not required, to incorporate compliance schedules into NPDES permits. The inclusion of a compliance schedule in a permit would be considered by the Regional Water Board on a case-by-case basis, taking into account the documentation submitted by the discharger to demonstrate that the schedule is justified and as short as possible. Regional Water Boards may choose to issue an enforcement order instead, if appropriate.

This alternative would give Regional Water Boards with existing NPDES compliance schedule authorization much less flexibility in authorizing and implementing NPDES compliance schedules than Alternatives 1.a and 1.b, above, since Regional Water Boards would need to follow the proposed policy when establishing compliance schedules in NPDES permits. However, the Regional Water Boards *without* existing NPDES compliance schedule authorization would under this alternative now be allowed to issue compliance schedules in NPDES permits, at their discretion, thus giving them greater regulatory flexibility than the "no action alternative."

[43] The proposed policy applies to all permits that are modified or reissued after the effective date of the policy.

This alternative would provide much more statewide consistency in both authorizing and implementing NPDES compliance schedules than Alternatives 1.a and 1.b, because the proposed policy establishes uniform provisions regarding authorization and implementation of NPDES compliance schedules that would apply to ***all*** regions. As such, this alternative would meet the project's stated goals of promoting statewide consistency in authorizing and implementing NPDES compliance schedules, and providing a more equitable basis for regulation. The compliance schedule provisions would be identical throughout the state, providing clear guidance to regulators, the regulated community, and other stakeholders on the appropriate use of compliance schedules. Some stakeholder and Water Board resources would additionally be preserved under this alternative, because the Central Coast, Colorado River Basin, and Lahontan Regions would be authorized to include compliance schedules in NPDES permits without first being required to go through a lengthy Basin Plan amendment process.

***Alternative 1.d: Adopt a compliance schedule policy that supersedes compliance schedule provisions in all regional and statewide plans and policies, with the exception of effective TMDLs and the SIP.***

The State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would supersede all existing NPDES compliance schedule provisions in regional and statewide plans and policies, with the exception of the SIP. Existing compliance schedule provisions in TMDLs that are in effect as of the effective date of the proposed policy would also not be superseded. This alternative is similar to Alternative 1.c ,above, except that the scope is expanded to also include most statewide plans.

As discussed earlier, none of the existing statewide water quality control plans (including the *Ocean Plan*, the *Thermal Plan*, and the *Bay-Delta Plan)* specifically authorize or address compliance schedules in NPDES permits, although these plans may be partly implemented through NPDES permits. This alternative would provide authorization and guidance for incorporating compliance schedules into eligible NPDES permits implementing these existing statewide plans.

Of existing statewide water quality control policies, the SIP is the only one to include specific provisions for authorizing and incorporating compliance schedules in NPDES permits. The SIP authorizes compliance schedules ***only*** for effluent limitations established to achieve compliance with CTR-promulgated criteria for priority pollutants. The SIP-authorized compliance schedule provisions became effective on May 18, 2000, will expire on May 18, 2010, and are available only for existing dischargers. An existing discharger may be granted a compliance schedule of up to five years from the date of a NPDES permit issuance, re-issuance, or modification. Because the length of an NPDES permit term is five years, all NPDES permittees should by now either have met the CTR criteria or have a compliance schedule incorporated into their permit requiring

them to meet the CTR criteria by May 18, 2010. Under this alternative, compliance schedules in NPDES permits based on the SIP would not be affected.

This alternative would provide more statewide consistency in both authorizing and implementing NPDES compliance schedules than the previously discussed alternatives (Alternatives 1.a, 1.b, and 1.c) because the proposed policy would supersede all regional and statewide plans and policies, with the exception of the SIP.

***Alternative 1.e: Adopt a compliance schedule policy that supersedes compliance schedule provisions in all regional and statewide plans and policies, except for the SIP's final compliance date.***

This alternative is the same as Alternative 1.d., above, except that, under this alternative, the statewide proposed policy would supersede the SIP's compliance schedule provisions. The statewide proposed policy would not, however, supersede the SIP's final compliance deadline of May 18, 2010, which is the final compliance date authorized under the CTR.

As mentioned under Alternative 1.d, above, the SIP is the only one of existing statewide water quality control plans or policies to include specific provisions for authorizing and incorporating compliance schedules in NPDES permits. The SIP authorizes compliance schedules ***only*** for effluent limitations established to achieve compliance with CTR promulgated criteria for priority pollutants. The SIP's compliance schedule provisions became effective on May 18, 2000. They authorize compliance schedules only for existing discharges, schedules may not exceed five years, and the final date for compliance cannot exceed May 18, 2010. All NPDES permittees should by now either have met the CTR criteria, or have a compliance schedule incorporated into their permit requiring them to meet the CTR criteria by May 18, 2010.

Under the proposed policy, a compliance schedule already incorporated into a NPDES permit would remain in effect until the permit is reissued or modified. Thus, even though this alternative would supersede the SIP's compliance schedule provisions, existing compliance schedules already incorporated in NPDES permits based on the SIP would not be affected (unless the permit is reissued or modified before the compliance schedule ends). All NPDES permittees eligible for a SIP compliance schedule should at this time either have been granted or denied such a schedule. In the unlikely event that a discharger exists that is eligible for a SIP compliance schedule, but has not yet received one, that discharger could apply for a compliance schedule under the proposed policy. The discharger, however, would not be granted a compliance schedule for CTR criteria that extended beyond May 18, 2010.

For practical purposes, this alternative is similar to Alternative 1.d, because (1) existing SIP compliance schedules in NPDES permits would not be affected by the proposed policy; (2) all NPDES permittees eligible for a SIP compliance schedule should at this time either have been granted or denied such a schedule; and (3) the proposed policy provisions are very similar to SIP provisions.

***Recommended Alternative*: Alternative 1.d.**

Staff recommends that the State Water Board adopt Alternative 1.d because this alternative best meets the project goals of providing statewide uniformity in authorizing and implementing NPDES compliance schedules; providing a basis for equitable regulation; and providing clear guidance on the appropriate use of compliance schedules in NPDES permits. In addition, staff believes that Alternative 1.d provides more clarity to regulators and the regulated community than Alternative 1.e because it states directly that the SIP's compliance schedule provisions for CTR criteria would not be not affected.

## ISSUE 2: DURATION OF COMPLIANCE SCHEDULES

### *Existing Regulatory Conditions*

Although the CWA limits the length of NPDES permits to five years, the CWA and federal regulations do not specifically limit the duration of an authorized NPDES compliance schedule to a five-year permit term[44], but simply require that compliance schedules be as short as possible. USEPA has, however, stated that experience has shown that five years is the maximum amount of time existing dischargers need to complete the necessary planning, funding, and facility upgrades to achieve compliance with new water quality-based effluent limitations[45]. The federally-promulgated CTR allowed up to five years, or up to the length of the permit, to comply with effluent limitations derived from CTR criteria.[46] The Great Lakes Guidance allows up to five years from the date of permit issuance or modification to comply with effluent limitations derived from that rule.[47] Under the Great Lakes Guidance, the compliance schedule may extend beyond the term of the permit.

In California, NPDES permits are usually renewed (and expire) on a five-year schedule. However, an expired permit may continue in effect until the effective date of a new permit if the permittee submits a timely renewal application. If the Water Board wants to include a compliance schedule that exceeds the normal five-year permit term, but it is possible that the permit will continue in effect beyond its expiration date, the Water Board will need to ensure that all interim and final milestones in the compliance schedule are enforceable. USEPA has stated that inclusion of the entire compliance schedule as an enforceable provision of the NPDES permit (including all interim requirements and the final effluent limitation) is necessary to ensure that the permit is

[44] See USEPA approval of the North Coast Region's compliance schedule provisions, dated November 29, 2006.
[45] See USEPA's letter, dated February 10, 2004, approving the amendment to the Water Quality Control Plan for the Los Angeles Region authorizing compliance schedules under Resolution No. 2003-001.
[46] See 40 C.F.R. §131.38(e).
[47] See 40 C.F.R. part 132, app. F., procedure 9.

consistent with the definition of compliance schedules in the CWA and federal regulation.

The compliance schedule provisions in the Los Angeles Region's Basin Plan and the SIP allow up to five years from permit issuance, re-issuance, or modification to meet final permit limitations. The proposed provisions of the San Diego Water Board are similar, except the San Diego Water Board's provisions allow one additional five-year extension of the compliance schedule, where the discharger has demonstrated satisfactory progress toward achieving compliance. The North Coast Region's provisions also allow up to five years from permit issuance, re-issuance, or modification, with one additional five-year extension of the compliance schedule possible. However, the North Coast Region's provisions specify that the discharger must have demonstrated satisfactory progress toward achieving compliance, met all permit conditions, and demonstrated that unforeseen circumstances beyond the control of the permittee have arisen that preclude compliance (such as a new treatment system not functioning as anticipated or a natural disaster).

The compliance schedule provisions of the San Francisco Bay, the Central Valley, and the Santa Ana Regions are tied to the adoption (or revision) of applicable standards rather than to the permit issuance, re-issuance, or modification. These three latter regions specify that compliance must be achieved within ten years of the adoption (or revision) of applicable standards. Similar ten-year deadlines are also included in the compliance schedule provisions in the Los Angeles and the San Diego Region's Basin Plans, and the SIP.

***Alternatives for State Water Board Action***

In order to meet the CWA requirement that the duration of compliance schedules be as short as possible, the proposed policy states that "***Any compliance schedule must require compliance as soon as possible****, taking into account the amount of time reasonably required for the discharger to design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities…"* [Emphasis provided]. As discussed above, the CWA does not restrict the maximum duration of an otherwise permissible compliance schedule. A reasonable range of alternatives for the maximum duration of compliance schedules is discussed below.

***<u>Alternative 2.a</u>: Five Years.***
***Adopt a compliance schedule policy that restricts the duration of a compliance schedule to five years after the inclusion of the compliance schedule into the NPDES permit, not to exceed the term of the NPDES permit.***

Under this alternative, the maximum duration of a compliance schedule is limited to five years. No extension is possible for any reason. Because NPDES permits in California are usually renewed on a five-year schedule, almost all dischargers would be required to be in compliance with an applicable standard within ten years under this alternative.

However, in rare cases it is possible that more than ten years could pass before the applicable standard was met (i.e., a discharger whose permit was renewed just prior to the adoption, revision, or new interpretation of a standard, the permit was then continued in effect after the permit expired, and the permittee was later granted a full five-year compliance schedule).

This alternative is similar to the CTR, the Great Lakes Guidance, the SIP, and the Los Angeles Region's Basin Plan's compliance schedule provisions, which also limit the length of the compliance schedule to five years. This alternative is simple for permitting authorities to administer because dischargers must comply within one permit term. Under this alternative, in the absence of final compliance deadline, as discussed in Issue 3, below, ultimate compliance with applicable standards could exceed ten years.

***Alternative 2.b:*** ***Five Years with a Possible Five-Year Extension. Adopt a compliance schedule policy that restricts the duration of a compliance schedule to five years after the inclusion of the compliance schedule into the NPDES permit, not to exceed the term of the NPDES permit; with the possibility of a five-year extension (not to exceed two permit terms) if unforeseen circumstances beyond the control of the discharger arise.***

This alternative is similar to the North Coast Region's provisions for maximum duration of compliance schedules. Under this alternative, NPDES permittees are required to meet final water quality-based limitations within five years after being granted a compliance schedule. However, a five-year extension of the compliance schedule may be granted where the discharger has met all the conditions of the permit including interim milestones, but unforeseen circumstances beyond the control of the permittee have arisen that preclude compliance with final permit limitations. Unforeseen circumstances include, but are not limited to, a natural disaster, failure of a new treatment system to function as anticipated, or a court ruling arising from a third-party lawsuit.

Under this alternative, in the absence of a final compliance deadline as discussed in Issue 3 below, more than ten years could pass before all NPDES dischargers were in compliance with an applicable standard (i.e., if the initial permit was issued just prior to adoption, revision, or new interpretation of a standard; the permit continued in effect after its expiration; a five-year compliance schedule was granted; and an additional five-year extension was approved).

While similar to Alternative 2.a, this alternative is less stringent and more flexible because it allows for a five-year extension of a compliance schedule under certain restricted conditions. This alternative would be slightly more complex to administer than Alternative 2.a (due to the additional documentation and process needed for a schedule extension) and, therefore, require more resources from dischargers and regulators. However, since only a very small portion of NPDES permittees would be eligible for an extension, the additional resources required would probably be minor.

***Alternative 2.c:*** ***Ten Years.***
***Adopt a compliance schedule policy that restricts the duration of a compliance schedule to ten years after the initial inclusion of the compliance schedule into the NPDES permit, not to exceed two NPDES permit terms.***

Under this alternative, the duration of a compliance schedule is limited to ten years or less, with no extension possible. However, in the absence of a final compliance deadline, as discussed in Issue 3 below, it is conceivable that more than fifteen years could pass before all dischargers would be in compliance with the applicable standard (if the initial permit for a discharger was issued just prior to adoption, revision, or new interpretation of an applicable standard and the discharger was given a ten-year compliance schedule).

This alternative is more lenient than Alternative 2.a because it allows for a longer compliance schedule. This alternative is also less stringent and more flexible than Alternative 2.b, because a longer compliance schedule is possible without the limitations specified in Alternative 2.b. This alternative is also less strict than existing compliance schedule provisions in the SIP and the Basin Plans, because compliance with applicable standards may in some cases exceed ten years after the adoption, revision, or new interpretation of the applicable standard. This alternative is somewhat similar to the San Diego Region's provisions; however, the San Diego Region's provisions include an absolute deadline for meeting applicable standards. Because a compliance schedule is allowed to extend beyond one permit term, this alternative is likely to require more resources to administer than Alternatives 2.a and 2.b.

***Recommended Alternative:*** ***Alternative 2.b.***

Staff recommends that the State Water Board adopt Alternative 2.b. This alternative is more flexible and equitable than Alternative 2.a, because it allows for a five-year extension if unforeseen circumstances beyond the control of the discharger arise. Because few permittees would be eligible for an extension of their compliance schedule, the additional resources required by dischargers and regulators to apply for and administer an extension would probably be minor on a statewide basis. Alternative 2.c is not recommended because, although this alternative provides more flexibility than Alternative 2.b, longer schedules are not appropriate in most cases. Alternative 2.c could encourage dischargers to expect longer compliance schedules as a matter of course, even where longer schedules are unnecessary. As discussed in Issue 3 below, however, staff recommends Alternative 2.b. coupled with a final compliance deadline for attaining water quality standards.

## ISSUE 3: DEADLINES FOR COMPLYING WITH APPLICABLE STANDARDS

### *Existing Regulatory Conditions*

The compliance schedule provisions adopted by the San Francisco Bay, Los Angeles, Central Valley, Santa Ana, and San Diego Water Boards and the provisions in the SIP

all include absolute ten-year deadlines for complying with applicable standards. The North Coast Region does not have a similar absolute compliance deadline in the Basin Plan, and it is not required by the CWA (the CWA simply requires that compliance schedules be as short as possible). Reasonable alternatives for including absolute deadlines in compliance schedule provisions are presented below.

***Alternatives for State Water Board Action***

***Alternative 3.a:*** ***No deadline.***
**Adopt a compliance schedule policy with no absolute deadline for meeting applicable standards.**

This alternative does not provide an absolute date for when an applicable standard must be met. This alternative is similar to the North Coast Region's provisions, where the maximum duration of compliance schedules is tied to the date when the schedule was included in the permit, rather than to the date when the standard was adopted, revised, or newly interpreted.

Under this alternative, final compliance with the applicable standard may vary depending on the dates of the inclusion of the compliance schedules into the NPDES permit, the length of the compliance schedule, and whether any schedule extensions are granted (see the discussion of the alternatives for Issue 2, above). Final compliance for the alternatives identified under Issue 2 ranged from ten to fifteen years.

This alternative allows NPDES permittees to be granted the full permissible duration for their schedule, regardless of when the applicable standard was adopted, revised, or newly interpreted. This is advantageous for dischargers as it allows them to know exactly how a new standard affects their permit limitations before they need to take corrective action to meet the new permit limitations. This may save money and resources. However, this alternative may also lead to a delay in final compliance with applicable standards, as a discharger may be encouraged to postpone any corrective action until a compliance schedule is incorporated into the NPDES permit.

***Alternative 3.b:*** ***Ten years.***
**Adopt a compliance schedule policy that restricts the duration of a NPDES compliance schedule to no more than ten years after the adoption, revision, or new interpretation of applicable standards.**

This alternative is similar to the provisions adopted by the San Francisco Bay, Los Angeles, Central Valley, Santa Ana, and San Diego Water Boards. The SIP likewise specifies a ten-year deadline for compliance with applicable standards.

This alternative provides more regulatory certainty than Alternative 3.a, above, because it specifies that final compliance with the applicable standard must occur by a certain known date. Because permit terms are five years in California, most dischargers should (if justified) under Alternative 3.b be able to apply for a full five-year compliance

schedule (the recommended alternative under Issue 2). The rare exception would be where a permit had been issued just prior to when a new, revised, or newly interpreted standard became effective, and then continued in effect after its expiration. This scenario would leave less than five years for a compliance schedule. However, nothing would prevent that discharger from taking necessary corrective actions earlier. Because *all* dischargers must be in compliance by a certain date, this alternative is more equitable than Alternative 3.a. This alternative would also likely lead to earlier final compliance than under Alternative 3.a, because there would be no incentive for dischargers to delay corrective action.

***Alternative 3.c*: Fifteen years.**
**Adopt a compliance schedule policy that restricts the duration of a NPDES compliance schedule to no more than fifteen years after the adoption, revision, or new interpretation of applicable standards.**

This alternative would allow a longer deadline for final compliance with applicable standards than the ten years that current regional and statewide plans and policies allow (with the exception of the North Coast Region Basin Plan, which specify no absolute deadline in its compliance schedule provisions). This alternative would easily accommodate the preferred Alternative 2.b (a maximum five-year compliance schedule with a possible five-year extension), above. It would also easily accommodate the other alternatives listed under Issue 2, but may be so long as to be pointless as a deadline. Final compliance with standards may be longer than under Alternatives 3.a or 3.b.

***Recommended Alternative*: Alternative 3.b.**

Staff recommends that the State Water Board adopt Alternative 3.b. Alternative 3.b best meets the stated project goals because: (1) it is the alternative most similar to existing regional and statewide compliance schedule provisions, thus providing regulatory continuity and uniformity; and (2) it strikes a reasonable and equitable balance between giving dischargers sufficient time to comply with new requirements and the need to comply with applicable standards as soon as possible.

Alternative 3.b provides more regulatory certainty and equity than Alternative 3.a, because it specifies that *all* dischargers must be in compliance by a certain known date. Alternative 3.c is too long to be a meaningful deadline, if combined with the recommended Alternative 2.b.

## ISSUE 4: EXTENDED COMPLIANCE SCHEDULES FOR TMDL-BASED PERMIT LIMITATIONS

### *Existing Regulatory Conditions*

In California, TMDLs typically are incorporated into regional Basin Plans through the Basin Plan amendment process. A TMDL adopted as a Basin Plan amendment must include an implementation plan for achieving reductions of pollutant mass, which often

specifies and authorizes a compliance time schedule for achieving the specified allocations. The compliance schedule found in a TMDL implementation plan is better known as an "implementation schedule."

The adoption of a TMDL implementation plan is not required under CWA §303(d); however, if an implementation plan includes compliance schedule-authorizing provisions, these provisions must be submitted to USEPA for approval under CWA §303(c). The TMDL may be achieved, in part, through water quality-based limitations in NPDES permits that are consistent with the assumptions and requirements of the TMDL waste load allocations. It is important to note that compliance schedules to attain water quality-based NPDES permit limitations based on TMDLs must be as short as possible (as determined in the TMDL support document), and otherwise consistent with the CWA's definition of compliance schedule.

Not all TMDLs in California are incorporated into the Basin Plans; some are adopted as a single permitting action. This is possible where a single discharger is responsible for the impairment or where a single order by the Regional Water Board can address the impairment. Because the TMDL can both be established and implemented through a single action, the Regional Water Board has the authority to issue a permit and enforcement action without first adopting the TMDL into the Basin Plan[48].

Implementing a TMDL through a single permitting action saves considerable Water Board resources and allows the TMDL to be implemented sooner. While a TMDL adopted as a single permitting action may not require a Basin Plan amendment, it may still need an implementation schedule longer than what may be authorized in the Basin Plan due to the sometimes complex approaches needed to meet waste load allocations and to ensure that water quality standards are no longer impaired. The North Coast and the Los Angeles Water Boards have adopted authorization in their Basin Plans that allows for extended compliance schedules for water quality-based NPDES permit limitations based on TMDLs established through a single permitting action.

***Alternatives for State Water Board Action***

***Alternative 4.a: No special provisions for TMDLs.***
**Adopt a compliance schedule policy that does NOT specifically allow additional time to comply with NPDES permit limitations that are based on TMDLs.**

This alternative is similar to the compliance schedule provisions adopted by the San Francisco Bay, Central Valley, Santa Ana, and San Diego Regional Water Boards, which do not specifically address compliance with TMDL-based NPDES permit limitations. Under this alternative, Regional Water Boards may authorize extended compliance schedules for TMDL-based NPDES permit limitations by incorporating

[48] However, all TMDLs must be incorporated either directly or by reference into a water quality management plan (i.e., Basin Plan) as required by CWA §303(d)(2). This incorporation can be done as a change without regulatory effect.

TMDLs with implementation schedules into the Basin Plans through the Basin Plan amendment process. This process requires USEPA review and approval.

This alternative would ***not*** authorize longer compliance schedules for NPDES permit limitations based on TMDLs adopted as a single-permitting action. Existing compliance schedule provisions in TMDLs that are in effect as of the effective date of the proposed policy would not be superseded.

***Alternative 4.b:*** ***Allow extra time to comply with a single permitting action TMDL.***
**Adopt a compliance schedule policy that specifically allows additional time to comply with NPDES permit limitations that are based on TMDLs adopted as a single-permitting action.**

This alternative would give Water Boards the authority to issue compliance schedules for NPDES permit limitations based on TMDLs adopted as a single-permitting action that could extend beyond the maximum timeframe otherwise provided in the proposed policy (if justified by the TMDL). This alternative would not establish any maximum timeframe or ultimate deadline for compliance under this specific circumstance.

This alternative is similar to the compliance schedule provisions adopted by the North Coast and the Los Angeles Water Boards. These Regional Water Boards have adopted provisions in their Basin Plans that authorize longer compliance schedules for NPDES permit limitations based on TMDLs adopted as a single-permitting action. Both Regions' provisions require compliance in the shortest possible/feasible period of time, but allow a schedule to extend beyond the otherwise specified maximum length of time. Neither Regions' Basin Plans set a maximum timeframe for complying with NPDES permit limitations based on TMDLs adopted as a single-permitting action.

Under this alternative, Regional Water Boards may also authorize longer compliance schedules for TMDL-based permit limitations by incorporating TMDLs with implementation schedules into the Basin Plans through the Basin Plan amendment process. Existing compliance schedule provisions in TMDLs that are in effect as of the effective date of the proposed policy would not be superseded.

***Alternative 4.c:*** ***Allow extra time to comply with any TMDL.***
**Adopt a compliance schedule policy that specifically allows additional time to comply with NPDES permit limitations that are based on a TMDL.**

This alternative would give Water Boards the authority to issue compliance schedules for NPDES permit limitations based on TMDLs that, if justified by the TMDL, would be allowed to extend beyond the maximum timeframe otherwise provided in the proposed policy. This alternative would not establish any maximum timeframe or ultimate deadline for compliance.

This alternative is similar to Alternative 4.b, above, except that the Water Boards' authority to grant extended compliance schedules for NPDES permit limitations would not be limited to TMDLs adopted as a single-permitting action, but would also extend to those TMDLs with implementation schedules that are incorporated into the Basin Plans through the Basin Plan amendment process. The extended applicability that this alternative would provide is not as useful as it appears, because the Regional Water Boards already provide the authorization for longer compliance schedules for TMDL-based permit limitations by incorporating TMDLs with implementation schedules into the Basin Plans. However, this alternative would provide the benefit that a TMDL adopted as a Basin Plan amendment would not need to have an implementation schedule approved by USEPA under CWA § 303(c). This would conserve some Water Board and USEPA resources. This alternative may also provide more clarity and guidance on the appropriate use of compliance schedules in NPDES permits than Alternative 4.b, because it addresses all types of TMDLs.

***Recommended Alternative: Alternative 4.c.***

Staff recommends that the State Water Board adopt Alternative 4.c because this alternative best meets the project goals of providing statewide uniformity in authorizing and implementing NPDES compliance schedules; providing a basis for equitable regulation; and providing clear guidance on the appropriate use of compliance schedules in NPDES permits.

By authorizing longer compliance schedules for TMDL-based permit limitations, Alternatives 4.b and 4.c are more equitable to dischargers than Alternative 4.a because TMDLs often require complex, coordinated, and long term strategies in order to meet waste load allocations and ensure that water quality standards are attained. Alternatives 4.b and 4.c also provide greater statewide uniformity in authorizing NPDES compliance schedules than Alternative 4.a, because ***all*** regions will be able to issue compliance schedules for NPDES permit limitations based on TMDLs adopted as a single-permitting action. Note that existing compliance schedule provisions in TMDLs that are in effect as of the effective date of the proposed policy would not be superseded under the recommended alternative.

While Alternatives 4.b and 4.c do not differ much on a practical basis, Alternative 4.c does provide slightly more clarity and guidance because it states directly that longer compliance schedules are authorized for NPDES permit limitations based on TMDLs, if justified by the TMDL. Alternative 4.c would further save some Water Board and USEPA resources, because future TMDL implementation schedules need not be approved by USEPA, if already authorized through this proposed policy.

## ISSUE 5: DISCHARGER ELIGIBILITY

### *Existing Regulatory Conditions*

As discussed earlier, USEPA's regulations[49] generally restrict compliance schedules to existing NPDES dischargers. Most new NPDES dischargers must attain water quality standards upon initiating discharge. However, the first NPDES permit issued to a new discharger may contain a compliance schedule when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before discharging waste[50].

Federal regulations[51] define a "new discharger" as any discharger that began discharging after August 13, 1979 and never had an NPDES permit. Dischargers that are not "new dischargers" are considered "existing dischargers." An "existing discharger" includes an increasing discharger (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge)."

USEPA modeled the definitions of new and existing dischargers in the CTR after these definitions, but with a cut-off date modified to reflect the CTR. Accordingly, the definition for a new discharger in the CTR is "any building, structure, facility, or installation from which there is or may be a 'discharge of pollutants' (as defined in 40 C.F.R. 122.2) to the State of California's inland surface waters or enclosed bays and estuaries, the construction of which commences after May 18, 2000."[52] The definition for "new discharger" in the SIP is virtually identical to the CTR definition. Under both the CTR and the SIP, an "existing discharger" is a discharger that is not a "new discharger" and includes an increasing discharger.

Compliance schedule provisions adopted by the San Francisco Bay, Central Valley, and Santa Ana Water Boards do not define "new" or "existing" discharger or specify which dischargers are eligible for compliance schedules. Compliance schedule provisions adopted by the Los Angeles and the San Diego Water Boards are similar to the SIP definition, except that a "new discharger" is defined as "any building, structure, facility, or installation from which there is or may be a "*discharge of pollutants*" (as defined in 40 CFR §122.2) to surface waters of the …region, the construction of which commences after **a new, revised, or newly interpreted water quality objective**

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[49] See 40 C.F.R. §122.47.

[50] 40 C.F.R. §122.47(a)(2) states: "The first NPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge."

[51] See 40 C.F.R. §122.2.

[52] See 40 C.F.R. §131.38(e)(2).

**becomes applicable**" [emphasis added]. The Los Angeles and San Diego Regions' Basin Plans tie the definition of "new" and "existing" discharger to the date when the new, revised, or newly interpreted water quality objective becomes applicable. These definitions track the CTR and SIP definitions, which define new and existing dischargers in relation to the effective date of the CTR criteria.

The North Coast Region's compliance schedule provisions define a "new discharger" as "any building, structure, facility, or installation from which there is, or may be, a discharge of pollutants, the construction of which commenced after November 29, 2006" [the effective date of the provisions[53]]. The number of "existing dischargers" under North Coast Region's provisions will therefore remain constant or decrease slightly (if existing dischargers cease to discharge).

***Alternatives for State Water Board Action***

***Alternative 5.a: Do not define "new" and "existing" discharger.***
This alternative is similar to the provisions adopted by the San Francisco Bay, Central Valley, and Santa Ana Water Boards. Under this alternative, "new" and "existing" discharger would simply not be defined. This alternative would not meet the project goal of providing clear guidance on the appropriate use of compliance schedules in NPDES permits.

***Alternative 5.b: Define "new" and "existing" discharger based on the SIP definitions.***

"***Existing discharger***" would be defined as "any discharger who is not a new discharger. An existing discharger includes an increasing discharger (i.e., an owner or operator of an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after a new, revised, or newly interpreted water quality standard becomes applicable)." A "***new discharger***" would be defined as "the owner or operator of any building, structure, facility, or installation from which there is or may be a "discharge of pollutants" (as defined in 40 C.F.R. § 122.2) to surface waters of the United States, the construction of which commences after a new, revised, or newly interpreted water quality standard becomes applicable."

This alternative is consistent with the SIP and CTR and with provisions adopted by the Los Angeles and the San Diego Water Boards.

***Recommended Alternative: Alternative 5.b.***
Staff recommends that the State Water Board adopt Alternative 5.b because this alternative is most similar to already existing regional and state compliance schedule provisions, while meeting the project goals of providing statewide uniformity in authorizing and implementing NPDES compliance schedules; providing a basis for

[53] The extension provision was approved later, on November 29, 2006.

equitable regulation; and providing clear guidance on the appropriate use of compliance schedules in NPDES permits.

## ISSUE 6: QUALIFYING PERMIT LIMITATIONS

### *Existing Regulatory Conditions*

As stated previously, compliance schedules may be included in NPDES permits only for water quality-based limitations (effluent and/or receiving water limitations), but not for technology-based effluent limitations. Water quality-based effluent limitations are required when technology-based effluent limitations are not sufficient to ensure that water quality standards will be attained and maintained in the receiving waters.

In general, NPDES permits must comply with all requirements in CWA §301[54]. An exception to this rule is for some storm water permits. While industrial storm water permits must comply with all requirements in CWA §301[55], storm water permits for MS4s are not required[56] to comply with CWA §301[57]. In California, MS4s are required to comply with water quality standards, but through an iterative approach[58]. Thus, the proposed policy does apply to industrial storm water permits (which include construction permits pursuant to 40 C.F.R. 122.26), but not to MS4 permits.

The 1990 *Star-Kist Caribe* decision[59] further established limits on the use of compliance schedules in water quality-based NPDES requirements through its interpretation of CWA §301(b)(1)(C). This section of the CWA provides that by July 1, 1977, NPDES permits must include effluents limitations as stringent as necessary to ensure compliance with water quality standards. The *Star-Kist Caribe* decision provides that immediate compliance must be achieved for any applicable state water quality standards adopted before July 1, 1977 and that have not been substantively revised after that date. Accordingly, water quality-based effluent limitations and receiving water limitations that implement water quality standards adopted before July 1, 1977 would be ineligible for compliance schedules in NPDES permits. The *Star-Kist Caribe* decision also addressed water quality standards adopted or revised after July 1, 1977. A compliance time schedule may be included in NPDES permits for state water quality standards adopted or revised after July 1, 1977, only if the state has specifically authorized the establishment of compliance schedules in the state's water quality standards or implementing regulations.

USEPA has also stated that compliance schedule authorizations can include water quality standards that were adopted prior to July 1, 1977, if the state has adopted a new

[54] See CWA §402(a).
[55] See CWA §402(p)(3)(A).
[56] See *Defenders of Wildlife v Browner* (9th Cir. 1999) 191 F.3d 1159.
[57] See CWA §402(p)(3)(B).
[58] See *Building Industry Association v State Water Board* (2004) 124 Cal. App. 4th 866.
[59] *In the Matter of Star-Kist Caribe*, *Inc*., NPDES APPEAL No. 88-5.

interpretation of the pre-July 1, 1977 standard[60]. If, for example, a narrative objective is for the first time implemented in a permit with a numerical limit for a specific pollutant, a compliance schedule may be appropriate. However, a mere re-adoption of a pre-July 1, 1977 standard without any substantive revisions would not qualify as a new or revised standard[61].

Various state and regional restrictions on the use of compliance schedules in NPDES permits are described below and summarized in Table 1, above. The SIP authorizes compliance schedules for water quality-based NPDES permit limitations that are based on CTR criteria[62].

Compliance schedule provisions in the North Coast Region's Basin Plan authorize compliance schedules in NPDES permits for water quality-based limitations (effluent and/or receiving water limitations) based on water quality objectives, criteria, or prohibitions that are adopted, revised, or newly interpreted after February 27, 2006. Objectives and criteria may be numeric or narrative. "Newly interpreted" is not defined. The compliance schedules may also apply to water quality-based NPDES limitations derived from TMDLs adopted as a single permitting action.

The San Francisco Bay Region's provisions authorize compliance schedules for effluent limitations in NPDES permits that implement objectives or standards adopted after November 13, 1995.

Compliance schedule provisions in the Los Angeles Region's Basin Plan authorize compliance schedules for effluent limitations in NPDES permits based on water quality objectives or criteria that are adopted, revised, or newly interpreted after February 18, 2004. Objectives and criteria may be numeric or narrative. "Newly interpreted water quality standard" is defined as "a narrative water quality objective that, when interpreted by the Regional Water Board during NPDES permit development (using appropriate scientific information and consistent with state and federal law) to determine the numeric effluent limits necessary to implement the narrative objective, results in a numeric effluent limitation more stringent than the prior NPDES permit issued to the discharger." Compliance schedules may also apply to water quality-based NPDES permit limitations derived from TMDLs adopted as a single permitting action.

Compliance schedules for the Central Valley Region are authorized for NPDES effluent limitations implementing water quality objectives or criteria adopted after September 25, 1995.

Compliance schedule provisions for the Santa Ana Region authorize compliance schedules in NPDES permits for effluent limitations based on water quality objectives or criteria that are adopted, revised, or newly interpreted after July 15, 2002. Objectives and criteria may be numeric or narrative. "Newly interpreted" is not defined.

[60] 1994 Whole Effluent Toxicity (WET) Control Policy (EPA-833-B-94-002).
[61] See *In the Matter of Star-Kist Caribe*, *Inc*., NPDES APPEAL No. 88-5.
[62] See Table 1.

The San Diego Region's Basin Plan authorizes compliance schedules for new or more stringent effluent and/or receiving water limitations that implement water quality objectives issued, revised, or newly interpreted after November 9, 2005 (note that this amendment is not effective yet), or that resulted from new knowledge on the characteristics and impacts of the discharge for any pollutant for which a water quality objective was issued, revised, or newly interpreted after July 1, 1977. These provisions specified that new knowledge about the characteristics and impacts of the discharge that can result in new or more stringent effluent or receiving water limitations include, but are not limited to, the following situations:

- Pollutants previously unregulated in an existing discharge are newly regulated because the new information indicates a reasonable potential for the discharge to exceed an applicable water quality objective in the receiving water;
- Pollutants are newly detected in an existing discharge due to improved analytical techniques;
- The point of compliance for a receiving water limitation is changed; and
- The dilution allowance for an existing discharge is changed.

Objectives and criteria may be numeric or narrative. "Newly interpreted" is not defined in the San Diego Region's compliance schedule provisions.

In summary, the Regions' compliance schedule provisions vary greatly in coverage and in restricting the use of compliance schedules. .

***Alternatives for State Water Board Action***

***Compliance schedules would only be authorized for NPDES permit limitations that are:***

***<u>Alternative 6.a</u>: Based on water quality standards that are <u>adopted or revised</u>:***

***<u>1.</u> After the effective date of this policy***.
Under this alternative, existing compliance schedules in NPDES permits that were authorized by the Water Boards prior to the effective date of this policy would no longer be authorized. Water Boards would have the option of issuing TSOs instead to affected dischargers. This would require additional Water Board resources and expose affected dischargers to mandatory minimum penalties and citizen lawsuits. Compliance schedules would not be authorized for NPDES permit limitations implementing "newly interpreted" water quality standards under this alternative.

***2. After the effective date of this policy with the exception that the following dates shall apply instead in the Regions specified below:***

i. North Coast: February 27, 2006
ii. San Francisco Bay: November 13, 1995
iii. Los Angeles: February 18, 2004
iv. Central Valley: September 25, 1995
v. Santa Ana: July 15, 2002
vi. San Diego: [effective date of San Diego Region's compliance schedule provisions or effective date of this policy, whichever occurs first]

Compliance schedules would not be authorized for permit limitations implementing NTR or CTR criteria (SIP provisions would apply). This alternative would ensure that existing compliance schedules in NPDES permits that were authorized by the Regional Water Boards after the dates specified above continue to be authorized (unless they are implementing "newly Interpreted" water quality standards). All provisions of this proposed policy would apply to these permits when they are modified or reissued.

Existing compliance schedules granted for permit limitations implementing "newly interpreted" water quality standards would no longer be authorized under this alternative. This would affect the North Coast, Los Angeles, and Santa Ana Regions that have compliance schedules provisions for NPDES permit limitations implementing "newly interpreted" water quality standards.

***Alternative 6.b: Based on water quality standards that are adopted, revised, or newly interpreted after [date as specified in either Alternatives 6.a.1 or 6.a.2 above].***

The North Coast, Los Angeles, Santa Ana, and San Diego Water Boards have all adopted provisions authorizing compliance schedules for NPDES permit limitations implementing "newly interpreted" water quality standards. However, these provisions differ in their definitions of "newly interpreted."

***1.*** Do not define **"newly interpreted"** water quality standard.
This alternative would leave the definition to the discretion of the Water Boards. This alternative is similar to the provisions adopted by the North Coast and Santa Ana Water Boards.

***2.*** A **"newly interpreted"** water quality standard means a ***narrative*** water quality objective that, when interpreted during NPDES permit development (using appropriate scientific information and consistent with state and federal law) to determine the permit limitations necessary to implement the objective, results in a numeric permit limitation more stringent than the limit in the prior NPDES permit issued to the discharger.

This alternative is similar to the provisions adopted by the Los Angeles Water Board. This alternative is also consistent with USEPA's WET Control Policy, which determined that states could authorize compliance schedules in permits for new or revised interpretations of narrative water quality criteria for toxicity, which were adopted prior to July 1, 1977.

***3.*** "**Newly interpreted"** water quality standard means a ***narrative or numeric*** water quality objective that, when interpreted during NPDES permit development (using appropriate scientific information and consistent with state and federal law) to determine the NPDES permit limitations necessary to implement the objective, results in a numeric NPDES permit limitation more stringent than the limit in the prior NPDES permit issued to the discharger. This interpretation includes new knowledge about the characteristics and impacts of the discharge that result in new, more stringent NPDES permit limitations. Examples include the following situations:

- Pollutants previously unregulated in an existing discharge are newly regulated because the new information indicates a reasonable potential for the discharge to exceed an applicable water quality objective in the receiving water;
- Pollutants are newly detected in an existing discharge due to improved analytical techniques;
- The point of compliance for a receiving water limitation is changed; and
- The dilution allowance for an existing discharge is changed.

This alternative is similar to the provisions adopted by the San Diego Water Board. Under this alternative, compliance schedules could be included in NPDES permits to implement numeric objectives or criteria that have not been revised since their effective date. This alternative would authorize compliance schedules for limits implementing numeric criteria and objectives any time new information resulted in more stringent effluent limits, even though the criteria or objective remained unchanged.

***Recommended Alternative: Alternative 6.a.2 combined with Alternative 6.b.2.***
Staff recommends that the State Water Board adopt Alternative 6.a.2 combined with Alternative 6.b.2. Under this scenario, the majority of NPDES compliance schedules already established by the Regional Water Boards will remain in effect, until the affected permits are reissued or renewed. This would conserve Water Board resources. Furthermore, affected dischargers would not be subjected to mandatory minimum penalties and citizen lawsuits. This scenario is also very similar to already existing regional compliance schedule provisions, while meeting the project goals of providing statewide uniformity in authorizing and implementing NPDES compliance schedules; providing a basis for equitable regulation; and providing clear guidance on the appropriate use of compliance schedules in NPDES permits.

## ISSUE 7: APPLICABILITY TO PROHIBITIONS

### *Existing Regulatory Conditions*

The CWA allows the authorization of NPDES compliance schedules to meet waste discharge prohibitions. Section 13243 of the Porter-Cologne Water Quality Control Act authorizes a Regional Water Board to specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.

Section 502(17) of the CWA defines a compliance schedule as "a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, ***prohibition***, or standard." [Emphasis provided]. Federal NPDES permit regulations at 40 C.F.R. §122.2 includes prohibitions under its definition for "applicable standards and limitations."

Of the five Regions' Basin Plans with effective compliance schedule authorizations, only the North Coast Region's Basin Plan specifically authorizes compliance schedules in NPDES permits for water quality-based limitations based on prohibitions. However, all Regional Water Boards have the option of adopting conditional prohibitions, including prohibitions with a delayed effective date. The Regional Water Boards may also include exceptions to the prohibition provisions.

### *Alternatives for State Water Board Action*

***Alternative 7.a: Do not specifically authorize compliance schedules for NPDES permit limitations implementing prohibitions.***
This alternative is similar to the provisions adopted by the San Francisco Bay, Los Angeles, Central Valley, Santa Ana, and San Diego Water Boards.

***Alternative 7.b: Authorize compliance schedules for NPDES permit limitations implementing prohibitions after [date as specified in either Alternatives 6.a.1 or 6.a.2 above].***
This alternative is similar to the provisions adopted by the North Coast Water Board.

***Recommended Alternative: Alternative 7.a***
Staff recommends that the State Water Board adopt Alternative 7.a because this alternative is most similar to already existing regional compliance schedule provisions and is more conservative than Alternative 7.b. As discussed above, this alternative does not preclude Regional Water Boards from adopting conditional prohibitions, including prohibitions with a delayed effective date.

## ISSUE 8: APPLICATION REQUIREMENTS

### *Existing Regulatory Conditions*

The proposed policy would authorize the Water Boards to grant compliance schedules in NPDES permits in accordance with the policy, where appropriate and justified. This

authorization is not a commitment to automatically grant a compliance schedule to every individual discharger that applies for or even qualifies for a compliance schedule. It only provides a Water Board the flexibility to do so where the Water Board finds that it is appropriate and justified. Toward that end, a discharger who wishes to be considered for a compliance schedule must submit an application along with requested information to the Water Board and must demonstrate to the Water Board's satisfaction that a compliance schedule is necessary, appropriate, and justified.

The SIP specifies the documentation that an existing discharger must provide when applying for a compliance schedule to meet CTR criteria. Under the SIP, a discharger applying for a compliance schedule must submit documentation to the appropriate Water Board that diligent efforts have been made to quantify and control pollutant sources and discharges and that immediate compliance is not feasible. The discharger must also submit a proposed schedule for additional source control measures, pollutant minimization actions, facility upgrades, etc., and demonstrate that the proposed schedule to achieve compliance is as short as practicable. The SIP states: *"The discharger shall submit to the RWQCB the following justification before compliance schedules may be authorized in a permit: (a) documentation that diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream, and the results of those efforts; (b) documentation of source control and/or pollution minimization efforts currently underway or completed; (c) a proposed schedule for additional or future source control measures, *pollutant minimization actions, or waste treatment (i.e., facility upgrades); and (d) a demonstration that the proposed schedule is as short as practicable*." The SIP application requirements are consistent with the conditions established by USEPA under the CTR[63] for compliance schedules.

Requirements for applying for compliance schedules vary somewhat among the Regional Water Boards that have existing authorization in their Basin Plans. Compliance schedule provisions adopted by the Central Valley Water Board do not specify application requirements. The provisions in the San Francisco Bay Basin Plan are quite similar to the SIP application requirements.

The Santa Ana Basin Plan states: *"To document the need for and justify the duration of any such compliance schedule, a discharger must submit the following information, at a minimum: (1) the results of a diligent effort to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream; (2) documentation of source control efforts currently underway or completed, including compliance with any Pollution Prevention programs that have been established; (3) a proposed schedule for additional source control measures or waste treatment; (4) the discharge quality that can reasonably be achieved until final compliance is attained; and (5) a demonstration that the proposed schedule is as short as possible, taking into account economic, technical and other relevant factors. The need for additional information and analyses will be determined by the Regional Board on a case-by-case basis."*

[63] See 40 C.F.R. §131.38(e).

Note that these provisions are also very similar to the SIP provisions, but have been expanded slightly. Item (4) was added and Item (5) further defined. The application requirements in the Los Angeles Basin Plan are identical to those in the Santa Ana Basin Plan.

The San Diego Water Board adopted provisions that were very similar, but combined Items (2) and (3) and changed Item (4) slightly: *"To document the need for and justify the duration of any such compliance time schedule, a discharger must submit the following information, at a minimum: (2) Identification of the sources of the pollutant in the waste stream, documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established, and a proposed schedule for additional source control measures or waste treatment needed to meet the WQBELs and/or receiving water limitations; (3) evidence that the discharge quality is the highest that can reasonably be achieved until final compliance is attained;..."*

The North Coast Basin Plan contains some of the most detailed application requirements for compliance schedules:

1) A written request, and demonstration, with supporting data and analysis, that it is technically and/or economically infeasible to achieve immediate compliance with newly adopted, revised, or newly interpreted water quality objectives, criteria, or prohibitions.
2) Results of diligent efforts to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream.
3) Documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established.
4) A proposed schedule for additional source control measures or waste treatment.
5) The highest discharge quality that is technically and economically feasible to achieve until final compliance is attained.
6) A demonstration that the proposed schedule of compliance is as short as technically and economically feasible.
7) Data demonstrating current treatment facility performance to compare against existing permit effluent limits, as necessary to determine which is the more stringent interim limit to apply if a schedule of compliance is granted.
8) Additional information and analyses, to be determined by the Regional Water Board on a case-by-case basis.

These requirements differ from the other regional application requirements by including the concept of "technically and economically feasible" in Items (1), (5), and (6), above. The North Coast Region's provisions state that "Technical and economic feasibility shall be determined consistent with State Board Order 92-49."

It should be emphasized that all consideration of the terms and conditions of NPDES permit requirements, including any proposed compliance schedules, must occur at a public hearing. The public is able to comment not only on the propriety of granting a

compliance schedule, but also on the interim limits, the duration of the compliance period, and whether the discharger made the appropriate showing that the compliance schedule was as short as practicable taking into account the relevant factors.

***Alternatives for State Water Board Action***

***Alternative 8.a: Do not specify application requirements***.

This alternative would leave it to the discretion of the Water Boards to specify application requirements. This alternative is similar to the Central Valley Region's provisions. While allowing for Regional Water Board differences in establishing NPDES permits, this alternative would not meet the project goals of providing statewide uniformity in implementing NPDES compliance schedules; providing a basis for equitable regulation; and providing clear guidance on the appropriate use of compliance schedules in NPDES permits.

***Alternative 8.b: Specify application requirements based on the SIP provisions.***

The State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would require a discharger seeking a compliance schedule to demonstrate to the satisfaction of the Water Board that the discharger needs additional time to design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with a permit limitation specified to implement a new, revised, or newly interpreted water quality standard. In addition, the discharger must provide the following documentation:

1) Documentation that diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream, and the results of those efforts;
2) documentation of source control and/or pollution minimization efforts currently underway or completed;
3) a proposed schedule for additional or future source control measures, *pollutant minimization actions, or waste treatment (i.e., facility upgrades); and
**4)** a demonstration that the proposed schedule is as short as practicable.

This alternative is also similar to the provisions in the San Francisco Bay Basin Plan.

***Alternative 8.c: Specify application requirements based on the requirements in the Los Angeles and the Santa Ana Basin Plans.***

The State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would require a discharger seeking a compliance schedule to demonstrate to the satisfaction of the Water Board that the discharger needs additional time to design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with a permit limitation specified to implement a new, revised, or newly

interpreted water quality standard. In addition, the discharger must provide the following documentation:

1) The results of a diligent effort to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream;
2) (documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established;
3) a proposed schedule for additional source control measures or waste treatment;
4) the discharge quality that can reasonably be achieved until final compliance is attained;
5) a demonstration that the proposed schedule is as short as possible, taking into account economic, technical, and other relevant factors; and
6) additional information and analyses as determined by the Water Board on a case-by-case basis.

***Alternative 8.d: Specify application requirements based on the requirements in the San Diego Basin Plan.***

The State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would require a discharger seeking a compliance schedule to demonstrate to the satisfaction of the Water Board that the discharger needs additional time to design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with a permit limitation specified to implement a new, revised, or newly interpreted water quality standard. In addition, the discharger must provide the following documentation:

1) The results of a diligent effort to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream;
2) identification of the sources of the pollutant in the waste stream, documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established;
3) a proposed schedule for additional source control measures or waste treatment needed to meet the water quality-based limitations;
4) evidence that the discharge quality is the highest that can reasonably be achieved until final compliance is attained;
5) a demonstration that the proposed schedule is as short as practicable, taking into account economic, technical, and other relevant factors; and
6) additional information and analyses as determined by the Water Board on a case-by-case basis.

***Alternative 8.e: Specify application requirements based on the requirements in the North Coast Basin Plan.***

The State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would require a discharger seeking a compliance schedule to demonstrate to the satisfaction of the Water Board that the discharger needs additional

time to design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with a permit limitation specified to implement a new, revised, or newly interpreted water quality standard. In addition, the discharger must provide the following documentation:

1) A written request, and demonstration, with supporting data and analysis, that it is technically and/or economically infeasible to achieve immediate compliance with newly adopted, revised, or newly interpreted water quality objectives or criteria;
2) results of diligent efforts to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream;
3) documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established;
4) a proposed schedule for additional source control measures or waste treatment;
5) the highest discharge quality that is technically and economically feasible to achieve until final compliance is attained;
6) a demonstration that the proposed schedule of compliance is as short as technically and economically feasible;
7) data demonstrating current treatment facility performance to compare against existing permit effluent limits, as necessary to determine which is the more stringent interim limit to apply if a schedule of compliance is granted; and
8) additional information and analyses, to be determined by the Water Board on a case-by-case basis.

***Alternative 8.f: Specify application requirements based on a combination of all the various Basin Plan application requirements.***

The State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would require a discharger seeking a compliance schedule to demonstrate to the satisfaction of the Water Board that the discharger needs additional time to design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with a permit limitation specified to implement a new, revised, or newly interpreted water quality standard. In addition, the discharger must provide the following documentation:

1) Diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream, and the results of those efforts;
2) source control efforts are currently underway or completed, including compliance with any pollution prevention programs that have been established;
3) a proposed schedule for additional source control measures or waste treatment;
4) data demonstrating current treatment facility performance to compare against existing permit effluent limits, as necessary to determine which is the more stringent interim limit to apply if a schedule of compliance is granted;
5) the highest discharge quality that can reasonably be achieved until final compliance is attained;

6) the proposed schedule is as short as practicable, given the type of facilities being constructed or programs being implemented, and industry experience with the time typically required to construct similar facilities or implement similar programs; and
7) additional information and analyses as determined by the Water Board on a case-by-case basis.

***Recommended Alternative: Alternative 8.f.***

Staff recommends that the State Water Board adopt Alternative 8.f. This alternative is very similar to already existing regional compliance schedule provisions, while meeting the project goals of providing statewide uniformity in authorizing and implementing NPDES compliance schedules and providing a basis for equitable regulation. By including a significant level of detail, it provides clear requirements for applying for a compliance schedule.

## ISSUE 9: PERMIT REQUIREMENTS

### *Existing Regulatory Conditions*

The federal CWA defines a compliance schedule as "a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard." Implementing USEPA regulations further require that a compliance schedule that exceeds one year from the date of permit issuance include interim requirements and the dates for their achievement. The time between interim dates must not exceed one year.

USEPA has stated that inclusion of the entire compliance schedule as an enforceable provision of the NPDES permit (including all interim requirements and the final effluent limitation) will ensure that the permittee must meet all compliance schedule milestones and that the permit is consistent with the definition of compliance schedules in the CWA and federal regulation.

USEPA approved the SIP's compliance schedule provisions because they are consistent with comparable provisions in the CTR[64]. Under the SIP, the compliance schedule must include a series of required actions to be undertaken for the purpose of compliance, along with a date for completing each task that reflects a realistic assessment of the shortest practicable time required. The compliance schedule must also include a final compliance date. If the final compliance date extends beyond the permit term, the final date and supporting explanation must be included in the permit findings. The compliance schedule with interim requirements and dates and the final compliance deadline, if the final compliance date is within the permit term, must be incorporated into the NPDES permit as enforceable provisions. The interim requirements must state that the discharger shall notify the Water Board, in writing, no later than 14 days following each interim date, of its compliance or noncompliance with the interim requirements.

[64] See 40 C.F.R. §131.38(e).

Under the SIP, when a compliance schedule exceeds one year from the date of permit issuance, *interim numeric limitations* with specific compliance dates must also be included in the NPDES permit. Numeric interim limitations for the pollutant must be based on current treatment facility performance or on existing permit limitations, whichever is more stringent. If the existing permit limitations are more stringent, and the discharger is not in compliance with those limitations, the noncompliance under the existing permit must be addressed through appropriate enforcement action before the permit can be reissued, unless antibacksliding provisions are met.

The San Francisco Bay Region's Basin Plan does not specify permit requirements in its compliance schedule provisions. The Central Valley Region's provisions require that a compliance schedule include "…*a time schedule for completing specific actions that demonstrate reasonable progress toward the attainment of the objectives or criteria and shall contain a final compliance date, based on the shortest practicable time (determined by the Regional Water Board) required to achieve compliance."* The Santa Ana and San Diego Regions' provisions are very similar to the Central Valley Region's provisions, except that the San Diego Region's Basin Plan provisions require that "…*the findings of the NPDES requirements shall specify the final effluent limitations."*

The Los Angeles Region's Basin Plan further requires that interim limits be included in the compliance schedule: *"The compliance schedule shall include a time schedule for completing specific actions (including* ***interim effluent limits****) that demonstrate reasonable progress toward attainment of the effluent limitations and, thereby, water quality standards." The North Coast Region's provisions also require that interim limits be included in a compliance schedule.*

***Alternatives for State Water Board Action***

***Alternative 9.a:*** ***Do not specify permit requirements***.

This alternative would leave it to the discretion of the Water Boards to specify permit requirements. This alternative is similar to the San Francisco Bay Region's Basin Plan's provisions. While allowing for Regional Water Board differences in establishing NPDES permits, this alternative would not meet the project goals of providing statewide uniformity in implementing NPDES compliance schedules; providing a basis for equitable regulation; and providing clear direction on the appropriate use of compliance schedules in NPDES permits.

***Alternative 9.b: Specify permit requirements based on the SIP provisions.***

The State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would specify the following permit requirements:

1) If the Water Board authorizes a compliance schedule in the permit, the Water Board shall include interim requirements and dates for their achievement.
2) If the compliance schedule exceeds one year, the Water Board shall establish interim numeric limitations for the pollutant in the permit; and may also impose interim requirements to control the pollutant, such as pollutant minimization and source control measures. Numeric interim limitations for the pollutant must be based on current treatment facility performance or on existing permit limitations, whichever is more stringent. If the existing permit limitations are more stringent and the discharger is not in compliance with those limitations, the noncompliance under the existing permit must be addressed through appropriate enforcement action before the permit can be reissued, unless the antibacksliding provisions in CWA §402(o) are met.
3) There shall be no more than one year between interim dates. The interim requirements shall state that the discharger must notify the Water Board, in writing, no later than 14 days following each interim date, of its compliance or noncompliance with the interim requirements.

***<u>Alternative 9.c</u>: As Alternative 9.b, above, but require that the entire schedule be included as enforceable permit terms.***

The State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would specify the following permit requirements:

*1)* If the Water Board authorizes a compliance schedule in the permit, the Water Board shall include interim requirements and dates for their achievement.
*2)* If the compliance schedule exceeds one year, the Water Board shall establish interim numeric limitations for the pollutant in the permit; and may also impose interim requirements to control the pollutant, such as pollutant minimization and source control measures. Numeric interim limitations for the pollutant must be based on current treatment facility performance or on existing permit limitations, whichever is more stringent. If the existing permit limitations are more stringent and the discharger is not in compliance with those limitations, the noncompliance under the existing permit must be addressed through appropriate enforcement action before the permit can be reissued, unless the antibacksliding provisions in CWA §402(o) are met.
*3)* There shall be no more than one year between interim dates. The interim requirements shall state that the discharger must notify the Water Board, in writing, no later than 14 days following each interim date, of its compliance or noncompliance with the interim requirements.
*4)* The entire compliance schedule, including interim requirements and final permit limitations, shall be included as enforceable terms of the permit, whether or not the final compliance date is within the permit term.

Alternative 9.c is based on the SIP provisions, but differs by requiring the entire compliance schedule to be included as enforceable terms of the permit whether or not the final compliance date is within the permit term. This alternative also incorporates

the compliance schedule provisions adopted by the North Coast and the Los Angeles Water Boards by requiring that interim limits be included in a compliance schedule.

***Alternative 9.d*: As Alternative 9.c, above, but do not require interim numeric limitations.**

The State Water Board would adopt a statewide policy on compliance schedules in NPDES permits that would specify the following permit requirements:

1) If the Water Board authorizes a compliance schedule in the permit, the Water Board shall include interim requirements and dates for their achievement.
2) There shall be no more than one year between interim dates. The interim requirements shall state that the discharger must notify the Water Board, in writing, no later than 14 days following each interim date, of its compliance or noncompliance with the interim requirements.
3) The entire compliance schedule, including interim requirements and final permit limitations, shall be included as enforceable terms of the permit, whether or not the final compliance date is within the permit term.

This alternative is identical to Alternative 9.c above, except that interim numeric limitations are not required. In this aspect, Alternative 9.d is similar to the provisions adopted by the Santa Ana, San Diego, and Central Valley Water Boards.

***Recommended Alternative*: Alternative 9.c.**

Staff recommends that the State Water Board adopt Alternative 9.c, above. This alternative is very similar to the SIP compliance schedule provisions, but differs by requiring the entire compliance schedule to be included as enforceable terms of the permit, whether or not the final compliance date is within the permit term. This alternative is consistent with USEPA's current position that the entire compliance schedule should be included in the permit to ensure that the permit is consistent with the definition of a compliance schedule in the CWA and implementing regulations.

Alternative 9.c provisions are also comparable to provisions adopted by the North Coast and Los Angeles Water Boards by stipulating that interim limitations must be included in the compliance schedule if the compliance schedule exceeds one year. Alternatives 9.b, 9.c, and 9.d all meet the project goals of providing statewide uniformity in authorizing and implementing NPDES compliance schedules and providing clear direction on the appropriate use of compliance schedules in NPDES permits. However, staff believes that Alternative 9.c provides for more equitable regulation than Alternatives 9.b and 9.d because under Alternative 9.c the discharger is held accountable for meeting the interim numeric limitations in the compliance schedule. The requirements that the discharger must meet are also more transparent to the discharger, the public, and the Water Boards under Alternative 9.c than under Alternative 9.b because the interim numeric limitations must be included as enforceable terms in the permit.

## 6. RECOMMENDED ALTERNATIVES

**Alternatives 1.d, 2.b, 3.b, 4.c, 5.b, 6.a.2 and 6.b.2, 7.a, 8.f, and 9.c.**

These alternatives were chosen as recommended alternatives because they best meet the project goals of:

1. Providing statewide uniformity in authorizing compliance schedules in NPDES permits;
2. Providing statewide consistency in the implementation of these provisions;
3. Providing a basis for equitable regulation;
4. Improving use of stakeholder and Water Board resources better by providing clear guidance on the appropriate use of compliance schedules in NPDES permits.

The recommended alternatives also incorporates recommendations made by USEPA in a letter, dated October 31, 2007, that NPDES permits with compliance schedules include explanations as to why compliance schedules are appropriate and how they provide for achieving compliance with the permit's final effluent limitations as soon as possible.

The recommended alternatives have been incorporated into the proposed policy, which is shown in Appendix A of this document.

## 7. ENVIRONMENTAL CONSIDERATIONS

### *Introduction*

In California, protection of the quality of waters of the state is entrusted by law to the State Water Board and the nine Regional Water Boards. As authorized by the Cal. Wat. Code, the State Water Board has adopted statewide water quality control plans and policies, such as the Ocean Plan and the SIP. Consistent with and complementary to these statewide plans and policies, each Regional Water Board has adopted a Basin Plan that contains specific water quality standards and implementation provisions for its Region. The Regional Water Boards are primarily responsible for implementing statewide water quality control plans and polices, and their individual Basin Plans.

Under provisions of CEQA, certified state regulatory programs are exempt from certain CEQA requirements, including preparation of an initial study, negative declaration, and environmental impact report. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. (Cal. Code Regs., Tit. 14, §15250)

The water quality planning process of the Water Boards, by which the boards prepare, adopt, review, and amend the statewide and regional water quality control plans and policies, has been certified by the Secretary for Resources. While the planning process

is exempt from certain CEQA requirements, it is subject to the substantive requirements in the Cal. Code Regs., Tit. 23, § 3777. Section 3777 requires a written report that includes a description of the proposed activity, an analysis of reasonable alternatives, and an identification of mitigation measures to minimize any significant adverse environmental impacts. Section 3777 also requires that the State Water Board complete an environmental checklist as part of the substitute environmental documentation. This report and environmental checklist contained in Appendix D fulfill these requirements.

***Growth-Inducing Impacts***

The CEQA Guidelines[65] provide the following direction for the examination of growth-inducing impacts: *"Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment."*

The proposed actions contemplated are described in their entirety in Appendix A of this staff report. Alternatives to these actions are analyzed in Chapter 5 above. Implementation of any of the proposed alternatives is not expected to induce additional growth as a result of perceived lessening of water quality protection requirements.

***Cumulative Impacts***

The CEQA Guidelines[66] provide the following definition of cumulative impacts:

*"'Cumulative impacts' refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.*

*(a) The individual effects may be changes resulting from a single project or a number of separate projects.*

*(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.*"

[65] Pursuant to Cal. Code Regs., Tit. 14, §15126.2(d).
[66] Pursuant to Cal. Code Regs., Tit. 14, §15355.

The fundamental purpose of the cumulative impact analysis is to ensure that the potential environmental impacts of any individual project are not considered in isolation. Impacts that are individually less than significant on a project-by-project basis could pose a potentially significant impact when considered with the impacts of other projects. The cumulative impact analysis need not be performed at the same level of detail as a "project level" analysis but must be sufficient to disclose potential combined effects that could constitute a significant adverse impact.

Implementation of any of the proposed alternatives is not expected to contribute to a significant environmental impact, either cumulatively or individually.

***Resolution of Environmental Checklist Items***

Pursuant to Cal. Code Regs., Tit. 23, §3777(a), an environmental checklist (see Appendix D of this staff report) was completed for evaluating potential environmental effects due to implementation of the proposed policy. Staff found that there would be no adverse environmental impacts resulting from the actions proposed in the policy.

Six Regional Water Boards have adopted compliance schedule authority into their Basin Plans, five of which have been approved by USEPA. The proposed policy incorporates the effective dates of these authorities and there are only minor changes in the process outlined in the proposed policy and the existing Basin Plan compliance schedule processes. The only exception is that the Los Angeles Water Board does not allow an extension beyond the first permit cycle that includes a compliance schedule. Since the goal of the existing Basin Plan authorities and the proposed policy is to bring NPDES dischargers into compliance in the shortest time practicable, whenever there is a new, revised, or newly interpreted water quality standard, adding the allowance of an extension to the Los Angeles Water Board's process will not have a significant effect on the environment. Furthermore, the proposed policy and the existing authorities all require that compliance be met within ten years after the adoption, revision, or interpretation of an applicable water quality standard.

The proposed policy will only apply prospectively to the remaining Regional Water Boards, currently without compliance schedule provisions. They will have the choice of utilizing the policy or continue to adopt compliance schedules under enforcement orders. Again, the proposed policy will not result in any change to the physical environment. Whenever there is a new, revised, or newly interpreted water quality standard, existing NPDES dischargers need time to come into compliance, whether it be under a permit schedule or an enforcement order schedule.

TMDLs typically incorporate implementation schedules with varying time schedules. The proposed policy does not change the existing practices and will not result in any change to the physical environment.

Finally, from an environmental standpoint, the proposed policy is intended to ensure that new, revised, or newly interpreted water quality standards are met in the shortest time possible by existing NPDES dischargers. The proposed policy will not result in an adverse change to the environment. Instead, the proposed policy provides a process whereby existing NPDES dischargers can come into compliance with new, revised, or newly interpreted water quality standards, and thereby improve the water quality of the state.

## 8. ECONOMIC CONSIDERATIONS

The adoption of this proposed policy will not result in any additional economic burden for dischargers. Actions taken by the discharger to comply with a compliance schedule issued in NPDES permit requirements will be the same actions taken to comply with a time schedule issued in an enforcement order. In fact, the dischargers may realize a net economic benefit if mandatory minimum penalties are avoided because a Water Board is not required to make a finding of violation as a prerequisite to incorporating compliance schedules in NPDES permit requirements.

## 9. STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt Resolution No. 2008-xxx (see Appendix A of this document), authorizing compliance schedules for existing dischargers in all NPDES permits adopted by the Water Boards that must comply with CWA § 301(b)(1)(C). This proposed policy supersedes all existing provisions authorizing compliance schedules in regional Basin Plans, but does not supersede the provisions authorizing compliance schedules adopted as part of the implementation of a TMDL, for CTR criteria or effluent limitations based on CTR criteria in the SIP. The proposed policy applies to all NPDES permits that are modified or reissued after the effective date of the policy that implements new, revised, or newly interpreted water quality standards that are more stringent than water quality standards previously in effect.

A discharger who seeks a compliance schedule must demonstrate to the satisfaction of the applicable Water Board that the discharger needs time to design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with a permit limitation specified to implement a new, revised, or newly interpreted water quality standard. If the Water Board determines that an existing discharger has met the application requirements for a compliance schedule, then the Water Board has the discretion to include an appropriate schedule in the NPDES permit. A compliance schedule must include interim requirements and dates for their achievement and, if the compliance schedule exceeds one year, must also include interim numeric limitations for the pollutant. Numeric interim limitations for the pollutant must be based on current treatment facility performance or on existing permit limitations, whichever is more stringent. The entire compliance schedule, including interim requirements and final permit limitations, must be included as enforceable terms of the NPDES permit.

Any compliance schedule must require compliance as soon as possible. Generally, the duration of the compliance schedule may not exceed five years ***or*** the life of the permit, whichever is less, and can in no event exceed ten years from the date of adoption, revision, or new interpretation of the applicable water quality standard. However, an extended compliance schedule may be established in a permit that has a permit limitation that implements waste load allocations specified in a TMDL. A compliance schedule may also be extended one permit term where unforeseen circumstances, beyond the control of the discharger, have arisen that preclude or significantly delay construction of the facilities or implementation of the programs expected to result in compliance with the final permit limitation, even though the interim milestones have been met.

Nothing in this proposed policy prevents a Water Board from requiring immediate compliance with NPDES permit limitations if a Water Board finds that immediate protection of beneficial uses of waters of the United States or California is in the best interest of the people of the state. However, in such an event, the Water Board shall make a finding stating the beneficial uses and specific interests of the people of the state that are being protected or promoted. Water Boards retain the discretion to issue an enforcement order with a time schedule, to compel compliance when the discharger has not acted responsibly to achieve compliance.

Issuance of compliance schedules in NPDES requirements would not limit public participation and comment on proposals to allow a compliance schedule in NPDES permit requirements rather than take an enforcement action to achieve compliance with water quality objectives. Consideration of the terms and conditions of NPDES permit requirements, including any proposed compliance schedules, must occur at a public hearing. The public would be able to comment not only on the propriety of granting a compliance schedule, but also on the interim limits, the duration of the compliance period, and whether the discharger made the appropriate showing that the compliance schedule was as short as practicable taking into account the relevant factors.

Further, the administrative and judicial remedies afforded under the Cal. Wat. Code remain fully available to those who object to a Water Board's issuance of a time schedule in NPDES permit requirements. In addition, this policy would not limit a Regional Water Board's ability to take any enforcement action authorized by law for violations of the terms and conditions of NPDES permit requirements. Because a compliance schedule is part of NPDES permit requirements, citizens may still bring an enforcement action pursuant to CWA §505 if a discharger does not meet a compliance schedule.

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